

Lex Vadiorum. N^o 101

THE
LAW
OF
MORTGAGES.

WHEREIN

Is Treated the Nature of Mortgages, and the several Sorts of Proviso's in the same Deed, or by Deed absolute; Defeazance, Demise and Redemise; or by Covenant, and otherwise: With special Clauses, Conditions and Covenants; Explained and Illustrated by many adjudged Cases at Common Law, and by Presidents.

Likewise of the Payments of the Mortgage-Money, by whom and to whom; and several Cases and Rules of Tender.

ALSO OF Assignments of Mortgages; and the Manner of Assignees Transferring, Accounting, &c. With proper and well-Pen'd Presidents, according to the Circumstances of Cases.

And further, Of the Equity of Redemption, and the Nature of it, and how it is governed by the Rules of Equity; and of Releases of Equity of Redemption, and how Transferrable or Extinguishable; With the Niceties of buying in Precedent Incumbrances. And several other Matters and Cases adjudged in the High Court of Chancery (with Presidents of Bills, Answers, Pleas) &c. To which are added several Cases of Pawns and Pledges adjudged at Common Law.

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MORTGAGES.

W E R N E R

the general course of events in the last period of the Republic. It contains a full and complete history of the Republic, from its first settlement to the present time. It is a work of great value to the student of American history, and to the general reader who wishes to know the history of the Republic. It is a work of great value to the student of American history, and to the general reader who wishes to know the history of the Republic. It is a work of great value to the student of American history, and to the general reader who wishes to know the history of the Republic.

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THE
PREFACE.

Mortgages being the general Security for *Money* throughout the Nation, little needs to be said to Recommend a Treatise of this Nature. The want of a true Understanding whereof, hath often times proved Fatal to Purchasers as well as Mortgagees; and that not only for the Loss of their Money, but the vast Charges consequent upon tedious and Vexatious Suits in Equity. And therefore I have not only made Observation on Cases relating to Mortgages at Common Law, but also as they stand and are governed by the Decrees of a Court of Equity. I have

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also added several Common Law Cases adjudged upon Pawns and Pledges: Of all which, if the Reader will be pleased to cast his Eye on the **CONTENTS** next ensuing, he may more fully receive Satisfaction, and Superfede the Trouble of Repetition here.

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THE LAW OF MORTGAGES.

CHAP. I.

The Nature of a Mortgage. Diversity between Mortgage of Lands and Pledging of Goods. Mortgage not meerly a Trust in Equity. Parol Agreement to be a Mortgage after a Conveyance. If it appear to be a Mortgage notwithstanding a Deed absolute, yet decreed Redemption. Where not a Lease, but Assurance by way of Mortgage. No Survivorship of a Mortgage in Equity. Covenant to Reconvey what is not done, the Vendee bath it absolutely. Defeasance : The Nature of it. Diversity between Inheritances executed and executory as to being Defeasanced. Diversity between a Release and a Defeasance. Defeasance on Stat. that if such Land be extended, then to be void, How to be construed.

Mortgage is derived of two French words, *Mort*, i. e. *Mortuum*; and *Gage*, that is, *Vadium* or *Pignus*; as if a Feoffment be made upon such Condition, that if the Feoffor pay to the Feoffee at a certain day, &c. Forty Pounds, then the Feoffor may reenter, &c. in this Case the

B Feoffee

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Mortuum vadium, & vivum vadium.

Feoffee is called Tenant in Mortgage: The Cause why it is called Mortgage is for that it is doubtful whether the Feoffor will pay at the day limited such a Sum or not, and if he doth not pay, then the Land which is put in Pledge upon Condition for the payment of the Money is taken from him for ever, and so dead to him upon Condition; and it is so called also to distinguish it from that which is called *Vivum vadium*. *Vivum autem, dicitur vadium, quia nunquam moritur ex aliqua parte quod ex suis proventus acquiritur;* as if a Man borrows One hundred Pound of another, and maketh an Estate of Lands unto him, until he hath received the said Sum of the Issues and Profits of the Lands, so as in this case neither Money nor Land dies or is lost. 1 *Inst.* 205. a.

Diversity between Mortgage of Lands, and Pledging of Goods.

There is a Difference between Mortgage of Lands, and Pledging of Goods. For the Mortgagee hath an absolute Interest in the Lands, but the other hath but a special Property in the Goods to detain them for his Security. Pledging doth not make an absolute Property, but is a delivery only till he pays, &c. so it is a Debt due unto the one, and a retainer of the thing to the other, for which there may be a redemption at any time upon Payment of the Money. But in case of Mortgage of Land, at his Peril he ought to redeem it in his time. *Cro. Jac.* 244. *Sir John Ratcliff versus Davies.* *Rel.* 178. In the case of Pledge, the general Property continues to the first Owner.

Mortgage not meerly a Trust in Equity.

A Mortgage is not meerly a Trust, but a Title in Equity. *Hard.* 487.

In natural Justice and Equity the principal Right of the Mortgagee is to the Money, and

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and his right to the Land is only as a Security for the Money, wherefore when the Security descends to the Heir of the Mortgagee attended with an Equity of the Redemption, as soon as the Mortgageor pays the Money the Lands belong to him, and only the Money to the Mortgagee, which is merely personal, and so accrues to his Executors or Administrators; and the Lord Chancellor Finch in *Thornborough* and *Baker's Case* was of Opinion, That all Mortgages ought to be look'd upon as part of the personal Estate, except the Mortgage of an Inheritance to a Citizen of London.

Note, A Parol Agreement after a Conveyance, cannot make it a Mortgage, if it were not so at first.

Bowen and Edward's Case, 13 Car. 2. The Plaintiff being seised in Fee of the Lands in question worth 200*l.* per An. Mortgaged the same to the Defendant's Father for 250*l.* and the Plaintiff agreed, and also sealed a Deed for the absolute Purchase of the Premises to the Defendant's Father, if the 250*l.* were not paid at the end of Seven Years: A Redemption was decreed, and the Defendant's Father had exhibited a Bill against the Plaintiff for the Land or the Money, which made it appear to be a Mortgage.

The Lessor Mortgaged his Reversion in Fee to the Lessee for Years, and at the day of Mortgage for Payment of the Money, he paid the Money. It was held that the Lease for Years was not revived, but extinct.

3 Leon. 6.
G. H. seised of Land in Fee, covenanted with M. W. to convey it by Fine or other Assurance to M. W. and his Heirs before the

B 2

Feast

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Where not a
Lease but Af-
surance by way
of Mortgage.

Covenant.

No Survivor-
ship of a Mort-
gage.

Fine and Non-
claim.

In what Case
Covenant to
reconvey which
is not done,
Vendee hath it
absolutely.

Feast of *Pasch* next following, which should be to the use of him and his Heirs, with a Proviso, that if he paid to *M. W.* 100 *l.* at the end of Thirteen Years, that then he might reenter, and that all Assurances should be to the Conusor, and covenanted and granted for him and his Heirs, with the said *M. W.* and his Heirs, that he and his Heirs should enjoy the said Land until the end of the said Thirteen Years, and after for ever if the said 100 *l.* were unpaid. This is not a Lease *per Cur*; for the intent of the Parties was to make Assurance of the Inheritance by way of Mortgage, which is but a Covenant that he shall during the time of the Mortgage; and the Covenant that he should not make waste (for such Covenant there was) doth not expound it otherwise, but was to the Intent that he being but a Mortgagee should not commit any Waste, for which otherwise there was not any Remedy. *Cro. Jac. 172. Evans and Thomas.*

No Survivorship shall be upon a Mortgage where the Money lent was in Trust, and with intention that each should have his Moiety and Interest again. *1 Rep. Chanc. 58.*

Mortgagee not bound to Claim within five Years of a Fine. *2 Keb. 522.*

W. Bargainee of Land for 60 *l.* by other Indenture covenants to remake to the Bargainor and his Heirs such Assurance as the Council of the Bargainor shall advise within a Year ensuing. *Proviso*, that if the Vendee make default in the Assurance, then if he do not pay 500 *l.* to the Vendor, that he shall stand seised to the use of the Vendor, the Vendor does not tender the Assurance, and the 500 *l.* is not paid. *Per Cur*; the Vendee hath the right

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right of the Land; for that it was the Folly of the Vendor that no Assurance was devised and notified to the Vendee, and so no default in the Vendee. *Dyer* 261. 9.

Defeasance.

Defeasance is derived from the French word *Defaire*, i. e. to defeat or undoe: It signifies a Condition relating to a Deed, Obligation, Recognisance or Statute, which being performed by the Grantor, Obligor, Conusor, the Act ordered or done is avoided, as if it never had been made.

There is a diversity between Inheritances executed and Inheritances executory; as Lands executed by Livery, &c. cannot by Indenture of Defeasance be defeated afterwards. So if a Disseisee release to a Disseisor, it cannot be defeated by Indenture of Defeasance made afterwards; but at the time of the Feoffment, Release, &c. the same may be defeated; but Rents, Annuities, Conditions, Warranties and such like Inheritances executory may be defeated by Defeasances made either at that time or at any time after. *1 Inst.* 237. And so may Statutes, Recognisances or Obligations, or other things executory, and of Statutes, Judgments and Obligations it is the usual practice to make a Defeasance of them afterwards. A Defeasance is a conditional Release; and a Release is an absolute Defeasance; and the difference is as aforesaid between the Defeasance of a thing vested, and of a thing executory; as in a Feoffment of Land, the Condition ought to be contained in the same

Diversity between Inheritances executed and executory.

Difference between a Release and a Defeasance.

The Law of Mortgages.

Charter of Feoffment, or in another Deed sealed at the same time with the Feoffment, or otherwise the Condition is void; for by the Feoffment the Estate of the Land is vested and executed in the Feoffee. Otherwise of Judgments, Obligations, &c. Bargains and Sales.

Defeasance on a Stat', that if such Land be extended to be void.

B. acknowledges a Stat' to *S.* There was a Defeasance, that if his Lands in the County of *S.* should be extended the Stat' shall be void. *Per Cur'*, the Defeasance is good and not repugnant, because it is by another Deed; but the Condition of a Bond not to sue the Obligation is void and repugnant. *Moor* 135. *Trot & Supprens.*

Diversity between a Defeasance and a Condition.

A Proviso or Condition is annexed to, or inserted in the Deed or Grant, but a Defeasance is usually in a Deed by it self concluded and agreed upon between the Parties, and having relation to another Deed.

In all Executory things which are made and created by Deed or Record (as Bargains and Sales, Judgments, Statutes, Recognizances) the same thing by the Consent of all the Parties to the creation of it, may in the like way be defeated and avoided. *1 Inst.* 236. *Plo.* 237. *1 Rep.* 112, 113.

The Day and Year of the Indenture of Defeasance to be set forth in Pleading.

In Debt by *A.* against *B.* Executor of *C.* on the Bond of *C.* *B.* pleads that *A.* by Indenture of Defeasance bearing Date the same Day and Year made at *Ely*, and brought into Court; Agreed, that the Bond should be void if *C.* during his Life should pay five Marks yearly to the Bishop of *N.* and the Defendant averred that *C.* during his Life paid the five Marks yearly to that Bishop: The Plaintiff Demurred and had Judgment principally, because the Plea did not mention

tion what Day and Year the Indenture was dated, nor the Place where the five Marks were paid to him, which was a matter issuable. *Dyer 27.*

C A P. II.

Mortgage in Fee. Where and in what Cases the Money paid to the Heir is Good. Where the Mortgage Money may be paid to the Assignee. With a Diversity, where the Money must be paid to the Heir, and not to the Executors. Where the Money may be paid to Executors as Assignees in Law. Of Assignees in Deed, and Assignees in Law. When Election to pay the Money to the first Feoffee, or the Second Feoffee. Where it is not safe to pay the Mortgage Money to the Administrator, durante minori etate.

IF a Man make a Feoffment in Fee upon Condition that he pay 100 l. to the Heirs, Executors or Administrators of the Feoffee within one Year after his Death, that then he to re-enter, and after the Feoffee makes a Feoffment to J. S. and dies, and the Feoffor pays the Money to the Heir of the Feoffee; this is a good performance, for the Heir is within the expresse words of the Condition, and the Feoffor is a stranger to the Conveyance which the Feoffee and his Assigns had, and it was resolved that as this Condition is, the Feoffee could not pay it to the Assignee of the Land, for Heirs, Executors and Administrators were expressed in the Condition, and the Assignee not: But the Assignee of the Land, although he be

Where and in what Cases the Money paid to the Heir is good.

Where the Mortgage Money may be paid to the Assignee.

not named in the Condition amongst the Persons which shall pay the Money, yet he may well pay Money for the Salvation of his Tenure.

Where the Money must be paid to the Heir and not to the Executors.

If the Condition be, that if the Feoffor pay to the Feoffee or to his Heirs such a Sum at such a Day, there after the Death of the Feoffee if he die before the day limited, the payment ought to be made to the Heir at the day appointed, and in such case the Money shall not be paid to the Executors; for the Law will never seek out a Person when the Parties themselves have appointed one; but if the Condition be to pay the Money to the Feoffee, his Heirs or Executors, then the Feoffor hath Election to pay it to either.

Where the Money may be paid to Executors as Assignees in Law.

And it was a fine diversity in the 1 *Inst.* fo. 210. a. If a Man make a Feoffment in Fee upon Condition that the Feoffee should pay to the Feoffor, his Heirs or Assigns, at such a day, &c. and before the day the Feoffor makes his Executors and dies, the Feoffee may pay the same either to the Heirs or Executors, for they are his Assigns in Law to this Intent. But if a Man make a Feoffment in Fee, upon Condition that if the Feoffor pay to the Feoffee, his Heirs and Assigns 20 l. before such a Feast, and before the Feast the Feoffee makes his Executors and dies, the Feoffor ought to pay the Money to the Heir and not the Executors, for in this case the Executors are no Assignees in Law; and the reason of the Diversity is, in the first Case the Law must of necessity find out Assigns, because there cannot be Assignees in Deed; for the Feoffor hath but a bare Condition, and no Estate in the Land which he can Assign over,

over ; for he hath parted with his entire Estate in Fee, and the Law shall never respect any word, if by reasonable construction it may take effect, and in this case the Law adjudgeth his Executors the most apt Persons to receive the Money, because they represent the person of the Testator for all Goods and Chateles ; but in the other case, the Feoffee hath an Estate in the Land which he may assign over ; and where there may be Assignees in Deed, the Law shall never seek out any Assigns in Law. And the Executors in this case cannot be assigned, because Assignees were only intended by the Condition to be Assignees of the Estate ; so it is in a Covenant to stand seised. *5 Rep. 96. Goodale's Case* there cited, and *1 Inst. 210. a.*

Assignees in Deed and Assigns in Law.

Assignees of the Estate.

If the Condition be to pay the Money to the Feoffee, his Heirs or Assigns, and the Feoffee make a Feoffment over, it is in the Election of the Feoffor to pay the Money to the first Feoffee, or to the second Feoffee ; and so if the first Feoffee dieth, the Feoffor may pay the Money to the Heir of the first Feoffee, or to the second Feoffee, for the Law will not inforce the Feoffor to take knowledge of the second Feoffment ; but suppose the Feoffor pay it to the second Feoffee (whose Feoffment is not duly executed) I conceive its no good Payment, and therefore if he make his Election to pay it to the second Feoffee, he ought to be well appraised of the said Feoffment, but the safest way is to pay it to the first Feoffee, or his Heirs.

Election to pay the Money to the first Feoffee or to the second Feoffee.

*A. enoffs B. on Condition, that if he pay 10*l.* to his Executors and Assigns within 3 Years next ensuing, then, &c. the Feoffee hath Issue 3 Sons whom he makes his Executors*

The Law of Mortgages.

Not safe to pay
the Mortgage
Money to the
Administrator
*durante mino-
ritate.*

Where the
Money ought
to be paid to
the Heir and
not the Exe-
cutor.

Executors, and dies before the day of Pay-
ment; the Ordinary commits Letters of
Administration to *J.S. durante minoritate* of
the Executors. It was the the Opinion of
Dyer, That the surest way was for *A.* to pay
the Money to the Executors, for the Admin-
istrator in such case is but a Bailiff or Re-
ceiver to the Executors, and shall be ac-
countable to them; so *Harpur, per Mannwood*,
if the Money be paid to one of the Exe-
cutors it is sufficient, and the Moneys to be
paid on this conditional Feoffment, are as a
Sum in Gross and not in the nature of a
Debt, *quod omnes concesser*. 4 *Leon.* 100.

A Condition to pay to the Mortgagee his
Heirs or Assigns, then the Mortgage shall be
void; the Mortgagee died, and the Money
was paid to the Executors, and it was ad-
judged to be no performance of the Condi-
tion, for the Executor was not named, and
the Money ought to be paid to the Heir,
who shall have the Land if the Money were
unpaid, and not the Executor. 1 *Brownl.* 64.
Alston and Walker's Case.

C A P. III.

By and to whom the Money is to be paid or tendered. Where a Condition descends to the Heir, he may pay or tender the Money. Tender made by Executors. Time of Tender. How, and to whom to be tendered. Where the Guardian may tender. Of Tender and Refusal, if yet the Debt remaineth. Money to be tendered to the Person of the Feoffee, and why. Where and in what Cases notice must be given of the payment of the Money. A Daughter pays the Money, and then a Son is born. Rules of Tender.

FEOFFMENT on Condition, that the Feoffor shall pay such a Sum at such a day, though the Feoffor die before the day of payment; yet if his Heir pay the Money at the day to the Feoffee, or tender him the Money and the Feoffee refuseth to receive it, then may the Heir enter, though the Condition doth not make mention of any payment by the Heir. 1st, Because there is a day limited, and the Heir comes within the time limited by the Condition, otherwise he could not do it. 2^{ly}, Because the Condition descends to the Heir, and therefore the Law that gives him an interest in the Condition, giveth him an ability to perform it. 3^{ly}, The intent and true meaning of the Condition shall be performed, and the Executor or Administrator of the Mortgagor may tender at the day, and if the Feoffee refuseth, the Heir may enter, for the Executor represents the Person of the Testator

Condition descends to the Heir and therefore he may pay the Money.

tor

Tender made
by Executors.

tor, and when the Executor makes the tender, and the Feoffee refuseth, though the Heir be a third Son yet he is no Stranger, but he and the Executors are also Privies in Law.

Feoffment on Condition, that if the Feoffor pay a certain Sum of Money to the Feoffee, then it shall be lawful to the Feoffor and his Heirs to Re-enter, if the Feoffor die before payment made, the tender by the Heir is void; for its to be construed, if the Feoffor during his life pay, and when the Feoffor dies, the time of the tender is past.

Time of tender.

How and to
whom to be
tendered.

Where the
Gardian may
tender.

As to the time of tender observe, though a convenient time before Sun-set be the last time given the Feoffor to tender; yet if he tender it to the Person of the Mortgagee at any time of the day of payment and he refuseth it, the Condition is saved for that time. If the Mortgagee die, his Heir within 14 years of age, the Gardian in Socage may tender in the name of the Heir, because he hath an interest as Gardian in Socage; where the Mother may tender the Money in the name of the Infant her Son, to perform a Condition of Redemption without a special Command or Agreement; but if a Stranger tender the Money to the Infant he is not bound to receive it; but if any Stranger in the name of the Mortgagor, or his Heir (without his consent or privity) tender the Money, and the Mortgagee accepts it, this is a good satisfaction, and the Mortgagee or his Heir agreeing thereunto may Re-enter into the Land.

In Ejectment it was found by special Verdict, that M. was seised and made a Feoffment in Fee upon Condition of payment of Money,

The Law of Mortgages.

13

Money, on the part of the Feoffor by way of Mortgage at a certain day, before which day *M.* died, his Son and Heir within age afterwards at the day of payment limited by the Mortgagee a Stranger at the instance and request of the Mother of the Heir, tendered the Money to the Mortgagee in the name of the Heir being within age, who refused it. *Per tot. Cur.* The same is not a sufficient tender to redeem the Land according to the Mortgage, for it is found by the Jury, that the Heir at the time of the tender was within age generally, and not particularly eight or ten years old, &c. then it might well stand with the Verdict, that the Heir at such time was of the age of 18 or 19 years, at which age he is by the Law out of the Ward of his Mother or any other *Prochein amy*, in which case it is presumed in Law that he hath discretion to govern his own Affairs, and in this case the Mother is but a Stranger, for the Law hath estranged the Mother from the government of the Heir; but if the Jury had found that the Heir at the time of the tender was of tender Age, (*viz.*) within the age of 14 years, the tender had been good. 1 *Leon.* 34. *Watkins and Astwick's Case.*

Special Verdict
saith not of
what Age the
Heir was when
tender was
made to him.

Note, If the Feoffee refuse to receive, and the Feoffor enters, he hath no remedy at Common Law to have the Money; but *Chancery* will relieve him. 1 *Inst.* 206, 208.

If lawful tender be once refused, he which ought to tender the Money is of this fully quit and discharged for ever afterward, *id est*, to make any such tender; but if it were a Duty before, though the Feoffor enter by force of the Condition, yet the Debt

Tender and so; full.

or

Yet the Debt
remaineth.

or Duty remaineth, as if *A.* borrows an 100*l.* of *B.* and after mortgageth Land to *B.* upon Condition for payment thereof, if *A.* tender the Money to *B.* and he refuseth it, *A.* may enter into the Land, and the Land is freed for ever of the Condition, but yet the Debt remaineth and may be recovered by Action of Debt. But if *A.* without any Loan, Debt or Duty preceding enfeoff *B.* of Land on Condition for payment of 100*l.* to *B.* in nature of a gratuity or gift; in that case if he tender the 100*l.* to him according to the Condition, and he refuseth it, *B.* hath no remedy therefore. 1 *Inst.* 209. *b.*

Money to be
tendered to the
Person of the
Feoffee and
why.

Seeing the Money is a Sum in Gross and Collateral to the Title of the Land, the Feoffor must tender the Money to the Person of the Feoffee, and it is not sufficient for him to tender it upon the Land, *aliter* of Rent; but if the Feoffee be out of the Realm, because the Feoffee is the cause that the Feoffor cannot tender the Money, the Feoffor shall enter into the Lands as if he had duly tendered it according to the Condition. 1 *Inst.* 210. *b.*

Where and in
what cases no-
tice must be
given of the
payment of the
Money.

If a Man make a Feoffment in Fee upon Condition, if the Feoffor at any time during his life pay to the Feoffee 20*l.* at such a place, that then, &c. in this case the Feoffor must give notice to the Feoffee when he will pay it, for without such notice the tender will not be sufficient. 1 *Inst.* 211. But its a sure thing for him that will make such Feoffment in Mortgage, to appoint a special place where the Money shall be paid, and then he may tender it there, and is not bound to seek the Person.

If

If a Man make a Feoffment of Lands on Condition, that if the Feoffor or his Heirs pay 10 l. that he may re-enter, and dies, leaving a Daughter who pays the Money ^{A Daughter} and enters, and then a Son is born, yet the ^{pays the Mo-} Daughter shall retain the Lands, *qui sentit onus, sentire debet commodum*, 9 H. 7. 35 Hob. 3. ^{ney and then} a Son is Born.

If she had not paid the Money the Land had been lost, and if she cannot retain the Land against the Son she hath no remedy for the Money, and by payment she is as a Purchasor.

1. As to tender, The last time is the most ^{Rules of ten-} Convenient, when the Money may be num- ^{der.} bred before Sun-set

2. If tender be made to the Mortgagee at any time of the day, and he refuse it, the Condition is saved for ever.

3. If a Man tender more than he ought to pay, it is good enough.

4. The tender in Bags is good, if really there was so much: It is the part of the Mortgagee to number it. 5 Rep. 114. b. *Wade's Case.*

C A P. IV.

To whom the Mortgage Money shall be decreed.

How it is at Common Law. Where there is no mention made of Heirs or Executors, to whom it should be paid. Where Election is to pay it to the Heir or to the Executor. Where the Mortgage Money (though of an Estate of Inheritance) shall be decreed to the Executor, and not to the Heir. Where Mortgage Money to be accounted as part of the personal Estate. Interpleader to a Bill, to whom he should pay the Money, to the Heir or Executor. Money on a Mortgage in Fee decreed to the Executor. Mortgage Money, Assets in the Hands of the Heir. Who may pay the Money and perform the Condition. Tender for an Infant by one who was not Gardian. What is a sufficient Tender or not. When the Condition shall be said to be performed. Diversity, where a thing is to be done to the Party and where to a Stranger. Covinous Payment. In what cases an Entry may be made into the Land, though the Money be paid.

CONCERNING this there hath been variety of Opinions in our Books; sometimes it hath been decreed to the Heir, and sometimes to the Executors according to the panning of the Proviso, and the intent of the Parties.

By the Common Law, if the Condition or Defeasance of a Mortgage of Inheritance be so penned, that there is no mention of Heirs or Executors, to whom the Money should be paid; in that case the Money ought

bought to be paid to the Executor, in regard that the Money came first out of the personal Estate: But if the Defeasance appoint the Money to be paid to the Heir or Executor disjunctively, there by the Common Law Election to the Heir or Executor if the Mortgagor pay the Money precisely at the day, he may elect to pay it to which of them he pleaseth; but where the day is past, and the Mortgage forfeited, all Election is gone at Law, for in Law there is no redemption; then when the Case is reduced to an equity of redemption, the payment is not to be at the election of the Mortgagor, for then he may defer the payment or compound it: Therefore in this case *aequitas sequitur legem*, and the Law gives the Executor the Money where no Person is named, and in reason and equity, the right of the Mortgagee is to the Money, and his right to the Land is only as security for the Money, and after payment the Law keeps a trust for the Mortgagor which the Heir of the Mortgagee is bound to execute. *Thornborough and Baker's Case, Anno Car. 2. 2. Chan. Ca. 221. A.C.*

It was ruled in *Tilly and Egerton's Case*, Where the Heir shall have the Mortgage Money. That the Heir should have the Mortgage Money, there being no defect of Assets in the Executor's Hands: If it be payable by the Condition to the Heirs or Assigns of the Mortgagor the Heir shall have the Money: If there be a Bond for payment of the Mortgage Money, that goes to the Executors. *Ch. Cases 88. Smith and Smolt, vide 1 Rep. Ch. 181.*

In *Standley and Mandfye's Case*, The Testator lent 1400 l. to P. and took a Mortgage of Lands to him and his Heirs in Fee, defeasanced to pay the said Mortgage Money

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to him, his Executors or Assigns. The Court decreed, That the said Mortgage Money belonged to the Executor and not to the Heir. 1 Rep. in Ch. 125. See my Lord Gorge and Dillington's Case.

Mortgage Money accounted as part of the Personal Estate, and why.

A Mortgage in Fee, and the Money made payable to the Executors or Administrators, and a Covenant to pay the Money accordingly, is to be accounted as part of the personal Estate. Car. 2.

Tates and Hoyer's Case, Car. 2

In a Mortgage for Years, and a Judgment for performance of Covenants, it was decreed to the Executor, and accounted as part of the Testator's personal Estate, he having given by Will his real Estate to his Heir, and the rather for that it was not in the power of the Heir to discharge the Judgment or the Mortgage Money, by the proviso being made payable to the Executor, and not to the Heir: and the Testator by his Will charged the Lands devised to his Heir to supply the deficiency, if the personal Estate was not sufficient, and if he had not taken the Mortgages to have been part of the personal Estate, he would have supplied them out of the Mortgages.

But in *Turner's Case*, 2 Rep. in Ch. 154. The Heir is decreed to have right to a Mortgage in Fee, and not the Executor. *Vide postea.*

The Law of Mortgages

19

6 Nov. 1667.

Owen Plaintiff, White and others Defendants.

The Bill was preferred by a Mortgagor against the Heir of the Mortgagee and his Executors to whom the Devisee had devised all his Mortgages, that he might pay the Money and have a Reconveyance, and the Defendant interpleaded to whom he should pay the Money: Decreed, that the Executors (Devisees) shall have the whole Money, and the Heir decreed to joyn in the Reconveyance.

Interplead.

Executors and not the Heir.

Turner's Case.

Mortgage was made in Fee which descended to the Heir at Law, and the Money 10 Years since paid to him. The Executor of the Mortgagee prefers his Bill, and had a Decree for the Money, but without Interest, though the Proviso was to pay to the Feoffee, his Heirs or Executors; yet when the day is past, it is as much as if no day had been expressed, and then Equity shall follow and appoint it to the Executors. 2 Ventr. 348.

Money on a Mortgage in Fee to the Executor.

And it is said in 2 Ventr. 350, 351. that Money to be paid on a Mortgage in Fee, whether forfeit or not before the death of the Mortgagee shall go to the Executor. Q. vide Sir Tho. Littleton's Case.

In 3 Leon. A Case was put, A Man Mortgageth his Lands to pay to the Mortgagee, his Heirs, Executors or Assigns a certain

C 2

Sum

The Money
paid to the
Heir within-
age, as Execu-
tor and not as
Heir, and shall
be Assets.

Sum of Money at a day certain; the Mortgagee dies, and makes his Heir within age, his Executor, and the Mortgagor pays the Money at the day to the Heir. *Per Cur.* The same shall be Assets in the Hands of the Heir as Executor, and that he has not the Money as Heir, and he shall be charged with it within age. 3 Leon. 32.

If a Man Mortgage his Land to W. upon Condition, that if the Mortgagor and J. S. pay 20 s. to the Mortgagee such a Day, that then he shall re-enter, and the Mortgagor dies before the day; in this case J. S. may pay the Money and perform the Condition, otherwise it is whilst the Mortgagor doth live, for in that time J. S. alone without him may not tender it, and if he do, this tender is no performance of the Condition, 1 Inst. 219.

Tender for an
Infant by one
who was not
Guardian.

It was adjudged in *Watkins and Ashwick's Case*, That where one rendered Money upon a Mortgage for an Infant who was not Guardian, nor was to have any interest in the Land, that it was adjudged a void tender. *Cr. Eliz.* 132. *vide supra.*

Winter and Loveday's Case.

Another case
about tender.

Winter by Deed indented Mortgaged to *Loveday*, a certain Lease on Condition to pay 400 l. to *Loveday* at a day certain at the Porch of such a Church; At the day of payment one *Cornwallis* sent unto *Loveday* to know, if *Loveday* would receive the Money which *Winter* owed to him at his House, who answered he was content, and he came there, and the Money was told and delivered in

in Bags to *Loveday*, but afterwards some contention did arise between *Winter* and *Loveday* for certain Writings, for which cause *Cornwallis* said, that if they would not agree between them they should not have his Money; whereupon *Winter* requested *Cornwallis*, that he might have the Money to carry to the said Porch of the said Parish Church, who was contented, and there *Loveday* came to receive it and *Winter* would not pay it. *Per Cur.* Here is not any payment, for it was not the Money of *Winter* but of *Cornwallis*, as appeared by *Winter*'s words; also *Winter* requested *Cornwallis*, that he might have the Money to carry to the Porch, so that it appears it was not *Winter*'s Money, and this is no sufficient tender. 2 Leon. 213.

When the Condition shall be said to be performed or not.

In most cases when by a Condition a thing is to be done one way, and to be done to the Party to the Condition himself and not a Stranger, and he doth accept it another way; this is a good performance of the Condition, *volenti non fit injuria*. But if the thing be to be done to a Stranger, and one that is no Party to the Condition, and if it be done in any other manner and he accept thereof; this is no performance of the Condition. If the Mortgagor pay the Money according to the Condition, and afterwards the Mortgagee delivers it to the Mortgagor as his own Money, the Condition is performed and the Mortgage discharged notwithstanding. But

Diversity when a thing is to be done to the Party, and where to a Stranger.

The Law of Mortgages.

Covinous pay-
ment.

If a Feoffment be made to J. S. upon Condition, that if the Feoffor pay to the Executors or Administrators of J. S. 10 l. the Feoffment shall be void, and J. S. die, and the 10 l. is paid to the Executor of J. S. according to the Condition; but is covinously done, i. e. there is a private Agreement that the Feoffor shall have all, or part of his Money again; this payment is no good performance of the Condition, to fetch the Lands out of the Hands of the Heir, but it ought to be a real, full and effectual payment. 5 Rep. 96. 1 Jac. 207.

Where an en-
try may be,
though the
Money is paid.

One makes a Feoffment to me on Condition, that he pay me 10 l. such a day, the Feoffment shall be void, and he doth not pay me at the day, but doth die, and afterwards by Agreement between his Heir and me he doth pay me the 10 l. and I receive and accept it, and thereupon I suffer him to enter and hold the Land; in this case the Condition is not performed, but I may enter upon him and oust him notwithstanding; but a relief may be in Equity. *Vide Winter and Loveday's Case, supra.*

C. A. P.

C A P. V.

What Acts done by the Mortgagor before the day of payment and performance of the Condition, shall be good or not. Lease by Estoppel where it shall take place before an Assignment. Where acceptance of Collateral satisfaction by the Mortgagee shall bind him. Of acceptance in full satisfaction. Of payment by way of Retainer. What payment shall be a good discharge of the Mortgage. Proviso, not to meddle with the actual possession till default of payment. What Interest passeth. What amounts to a Disseisin or not. Where the Wife of the Mortgagee shall have Dower or not.

IF *A.* Mortgage Lands to *B.* in Fee upon Condition on payment of 10*l.* to re-enter, and afterwards *A.* before the day of payment he being in Possession makes a Lease for Years by Indenture, and afterwards performs the Condition, this shall be a good Lease against himself by way of Estoppel, although he had nothing in the Land at the time of the Demise, 1 *Rolls Abridg.* 874. *Omelangblad* and *Hood's Case*. And in this case, if *A.* after performance of the Condition makes a Feoffment to *D.* he shall be bound and estopped to avoid the Lease as well as *A.* himself, for that he claims under *A.* that was estopped. *Ibid.* 876.

Windham in the Case of *Wbaley* and *Anderfon* said he had known that, where one mortgageth Lands and afterwards leaseth by Estoppel, and after procureth Money to be

Assignment.
Lease by Estoppel.

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repaid, and Assignment to be made : It was held, that the Lease by Estopple would first take place before the Assignment, which *Twisden* remembred to be the Case of a poor Man in *Hackney*.

Where acceptance of a Collateral satisfaction by the Mortgagee shall bind him.

Acceptance in
full satisfaction.

If the Feoffor in Mortgage pay to the Feoffee an Horse, or a Cup of Silver, or a Gold Ring, or any such other thing in full satisfaction of the Money, and the other receives it; this is good enough, and as strong as if he had received the Sum of Money, though the Horse or Ring were not of the twentieth part of the value of the Sum of Money, because the other hath accepted it in full satisfaction. *Litt. Sect. 344.* So if the Feoffee accept of a Statute or Bond in satisfaction of the Money ; It is good satisfaction where the Condition is for payment of 20 l. the Obligor or Feoffor cannot at the time appointed pay a lesser Sum in satisfaction of the whole, because it is apparent the lesser Sum of Money cannot be a satisfaction of a greater : But if the Obligee or Feoffee do at the day receive part, and thereof make an Acquittance under his Seal in full satisfaction of the whole, it is sufficient, by reason the Deed amounteth to an Acquittance of the whole.

If the Obligor or Feoffor pay a lesser Sum of Money, either before the day, or at another place than is limited by the Condition, and the Obligee or Feoffee receiveth it ; this is a good satisfaction.

If

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If the Obligor or Feoffor be bound to pay 100 Marks at a certain day, and at the day the Parties do account together, and for that the Feoffee or Obligee did owe 20 l. to the Obligor or Feoffor, that Sum is allowed, and the residue of the 100 Marks paid: This is a good Satisfaction, and yet the 20 l. was a thing in Action, and no payment was made thereof, but by way of Retainer or Discharge.

Payment by way of Retainer.

1 Inst. 213. b.

In *Vere and Langley's Case*. Payment of 5 l. for 5000 l. is a discharge of the whole, and a discharge as to one is a discharge to all. And *Hales*, Chief Justice, said, He knew a Mortgage of 6000 l. discharged by payment of 500 l. 1 Keb. 788.

Mortgage discharged by the Payment of a less Sum.

What payment shall be a good Discharge of the Mortgage. Vide supra.

Account for 100 l. Jury find *Bartholomew* the Defendant paid the 100 l. to *Hewer* the Plaintiff in Redemption of a Mortgage, and he commanded his Servant to put it in his Closet, and he did so; and afterwards the Defendant demanded of the Plaintiff certain Evidences and Bonds, which he refused to deliver; then the Defendant required he might have his Money again, which he then had paid, and the Plaintiff thereupon commanded his Servant *J. C.* that he should fetch back the said 100 l. *ad redeliberand'* to the *pre-dict'* (Defendant) *J. S.* did fetch the Money, and did pour it forth upon the Table; *eid'* (*Defend.*) *ad intentione ut idem* (*Defendens*) *suas centum Libras pred'*, quas *idem* (*Def.*) to the Plaintiff had paid, *reciperet in presentia* of the

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The Law of Mortgages.

the Plaintiff, and the Plaintiff did then and there will the Defendant *ad recipiend'* the aforesaid 100*l.* *per ipsum Def. prefat'* *Quer'* *ut prefertur solat'* *quas 100 l. idem (Def.) tunc & ibid' recepit & asportavit.*

Per Cur', This Payment was a good discharge of the Mortgage; and although he afterwards required it again as his own Money, yet it shall not avoid that, which was absolutely paid, but the Mortgage was absolutely discharged, and the Money was the Plaintiff's own Money. And although he delivered it to the Defendant as his own (not knowing the Law therein) supposing it to be no Payment, yet in regard he did not give it otherwise, nor upon other Consideration, the Defendant received it as the Plaintiff's Money, and is accountable for it. *Cro. Jac. 614. Hewer and Bartholomew.*

Powley and Blackman.

John C. was seised of Lands in Fee, and by Indenture Inrolled, Bargained and Sold the same to *William Perryman* in Fee for 300*l.* with a Proviso, that if he paid to the said *William Perryman* 300*l.* in this manner (*viz.*) &c. then the Bargain and Sale should be void. Proviso etiam & agreement fuit between the said Parties that the said *William Perryman*, His Heirs and Assigns, should not intermeddle with the actual Possession of the Premises, or perception of the Rents and Profits thereof until default of Payment were made of the said Sums, or any part thereof. *William Perryman* did not enter into the said Tenements. *John C.* before any Days of Pay.

Payment let the Land to *W. D.* for 6 Years, rendering Rent unto him, and died: The Lessee enters, and claimed nothing but the said Term. *W. D.* paid the Rent Yearly to *John C.* and at the end of the Term surrenders the said Tenements to *John C.* Afterwards *William Perryman* made his Will, and devised these Tenements to *Richard Perryman*, Lessor of the Plaintiff.

1. Q. What Interest *John C.* the Bargainor had by this Agreement with the Bargainee, that he should not intermeddle with the Tenements till default of Payment? Whether he was Lessee for so many Years, or only in as Tenant at Will or Sufferance; for it is not a Covenant or Agreement with the Bargainee that he shall enjoy it during those Years, which had been a Lease, but he is only Tenant at Will of the Bargainee, or Tenant at Sufferance.

Proviso, Not to intermeddle with the actual Possession till default. What Interest passeth.

2. Q. Whether his making a Lease for Years, and the Lessee entering and paying the Rent, and claiming nothing but the Term, and after at the end of the Term, yielding up the Possession to the Bargainor, shall be a Disseisin; and if it be a Disseisin, whether it is not purged by the Re-entry of the Bargainor, and occupying it *in statu quo prius*, and reducing the Inheritance to the Bargainee, so as he was not out of Possession, and so his Will thereof be good. *Per Cur.*, when the Bargainor entered, as shall be conceived by the words, Yielding up the Tenements at the end of the Term, if he were a Disseisor before (as they did not agree that he was, because neither the Lessor nor Lessee intended to make any Disseisin, the Lessee claiming but his Term) it was only

Disseisin.

Disseisin purged
by Entry.

only a Disseisin in the Lessee for Years ; and when the Term being expired, the Bargainor Re-enters, that purgeth the Disseisin, and the Bargainor is in as he was before, and the Inheritance is vested in the Bargainee, and his Will shall be good. Otherwise it would be a mischievous Case in many Assurances, where the Mortgagor being in upon Condition to pay at the end of the Year, and in the *Interim* that the Mortgagee shall not meddle, who makes a Lease for half a Year, and after reenters before the Day of Payment, that he should be a Disseisor against his own intent, and the intent of the Bargainee, that the Bargainee shall be said to be out of Possession, so as he cannot make a Bargain and Sale at his Will ; by this means many Assurances would be destroyed. *Cro. Jac. 654. Powlesley and Blackman. Vide this Case cited 4 Mod. 48.*

Where the Wife
shall have
Dower or not.

Upon a Mortgage of Land, if it be redeemed, the Wife of the Mortgagee shall not have Dower. And if a Husband takes a Fine, *sur Conusance de droit come ceo*, and renders again, although it was once the Husband's, yet his Wife shall not have Dower ; for it is in him and out of him, *quasi uno flatu*, and by one and the same Act.

A. S. Seised in Fee, by Indenture inrolled Bargains and Sells to the Husband for 120 l. in Consideration he shall Redemise to him and his Wife for their Lives under a Pepper Corn Rent ; and with a Condition, that if he paid the 120 l. at the end of 20 Years the Bargain and Sale to be void. He Redemiseth accordingly and dies, his Wife brings Dower. Though it be against Equity, and the Agreement of the Husband at the time

time of the Purchase, That she should have it against the Lessees; for it was intended that they should have it Redemised immediately to them as soon as they parted with it, and it is but in Nature of a Mortgage. Yet *per Cur'*, by Law she ought to have Dower in this Case, for by the Bargain and Sale the Land is vested in the Husband, and thereby his Wife intituled to have Dower. And when he Redemiseth it upon the former **A-Redemise** agreement, yet the Lessees are to receive it subject to their Title of Dower: And it was his Folly that he did not conjoin another with the Bargainee. This was agreed on by the Judges at Serjeants Inn. *Cro. Car.* 190. *Nash and Preston.*

C A P.

C A P. VI.

Construction. Bargainee by Agreement is not to take the Profits till default of Payment, what Estate the Bargainor hath. What time is sufficient to gain a Reputation, so as to make Lands pass as parcel. Of Mortgages as to Baron & Feme. Term Mortgaged by the Baron & Feme Survives to the Husband: And so Conditions shall survive to him. The Wife's Term Mortgaged by the Husband, Wife dies, then he pays the Money and dies. Q If his Executors shall have it by Forfeiture. Condition to pay on Mortgage, or to be void, its at the Mortgagor's Election. Where the Condition of a Bond for Performance of Covenants extends to the Payment of the Mortgage Money or not.

Vide Pousley and Blackman's Case, ut supra.

Bargainee not to take the Profits till default of Payment, what Estate the Bargainor hath.

IF A. Bargain and Sell Lands to B. by way of Mortgage, on Condition to pay certain several Sums yearly for six Years ensuing, &c. and it is covenanted and agreed between all the Parties that the Bargainee shall not take any Profits of the Land until there be default of some of the Payments aforesaid. This doth not make it a Lease at Will, because it is not that the Bargainor shall take the Profits, but only that the Bargainee shall not take them, which sounds in Covenant, and he is Tenant at Sufferance, and not Tenant at Will. 1 Rolls Abr. 849. *Pousley and Blackman. Cro. Jac. 659.*

Sir W. Green being seised in Fee of the Manors of Great Milton and Little Milton, and the reputed Manors of Great Chilworth and Little

Little Chilworth, purchased 30 *El.* of *Sir Will. Dormer*, and of other Lands purchased, 1 *Fac.* which one *Ives* occupied together till 3 *Fac.* and then in consideration of the Marriage of *Sir Mich. Green* his Son with one *M. Read*, with whom he had 4500*l.* covenants to stand Seised of the said Manors of *Great Milton* and *Little Milton*, and of divers particular Closes by name in *Chilworth*, and of all his other Lands, Tenements and Hereditaments to the said Manors appertaining or used, and occupied with them, to the use of himself for Life, and after of such a Manor and some of the Closes by Name to the use of *Anne* his Wife for her Jointure; and of other the particular Closes before-mentioned to the use of *M.* for her Life for her Jointure, and after the Decease of *Sir Will. Anne* and *M.* to the use of the said *Sir Michael Green*, and the Heirs Male of his Body, Remainder over; Afterwards *Sir Will.* and *Sir Michael* joined in a Mortgage, Bargain and Sale of the Manors of *Milton* and *Chilworth*, and all the Lands thereunto appertaining or reputed as part of the same, or within the same, and they levied a Fine by the name of, &c. which quantity comprised as well the Freehold as the Manors.

The Question was, Whether the Parcels of Land divided from the Manor by the Intail, and the Freehold Lands lately Purchased should pass by this Mortgage? And the Lord Keeper, with Justice *Jones* and Justice *Hutton* in Chancery, resolved, That the Lands intailed, which were parcel of the Manor, shall not be said to be severed from the Manor: For the Freehold never being severed, but remaining entire in *Sir W. Green* during

The Law of Mortgages

What time is
sufficient for the
gaining a Re-
putation.

during his Life, shall pass as parcel of the Manor at the time of the Mortgage; and that the Freehold bought in and occupied with the Manor, although it was but two Years before the Mortgage, may pass, being said and reputed parcel, and by that Name. And the Fine is well enough guided by the Indenture for the Manors and for the Freehold purchased, although they were not in *rei veritate* parcel of the Manor; and a little time is sufficient for the gaining a Reputation. *Cra. Jac. 308. Sir Geo. Symond's Case.*

Mortgages as to Baron & Feme.

Term Mortgaged by Baron & Feme survives to the Husband.

And so the Condition survives to him.

Eliz. Radford being possessed of a Lease for a long Term, Married *John Holland*; then he and his Wife Mortgaged their Interest and Term of Years unto *John Emerson* for the payment of 22 l. *Eliz.* dies before the day of Payment, and *John Holland* her Husband paid the Money at the day, in Redemption of the Mortgage, and entred and made *Anne* his Wife Executrix, who entred: *John Radford* took Administration of the Goods of *Eliz. Wife of John Holland*, and entred upon the Lessee, upon whom *Anne* reentred, and made the Lease to *Young* the Plaintiff in Ejectment. Judgment *pro Quer.* for though the Lease was the first Wife's, and the Husband was possessed in her Right, so as though he had purchased the Fee-simple the Lease had not been extinct, yet by the Intermarriage he had full power to alien it, and if he survive the Wife, he is to enjoy it against her Executors and Administrators. So here when he Survives, the Condition survives to him,

him, and restores him to the Lease in such a state as it should have been if the Lease had not been aliened, and the rather for that the Husband paid all the Money after the death of the Wife. *Hob. p. 3. Yong versus Radford.*

If a Man be posselt of a Term in the right of his Wife, and Mortgageth it for a certain Sum of Money to be paid at a day certain, and before the day the Wife dieth, and the Husband pays the Money at the day, and then dieth. The Question was, whether his Executors or the Administrators of the Wife shall have the Term. *4 Lebn. 185.*

Nash and Priston.

J. S. seised in Fee by Indenture inrolled Bargains, and sells to the Husband for 120 l. in consideration he shall redemise it to him and his Wife for their Lives rendering a Pepper-corn, and with a Condition that if he paid the 120 l. at the end of 20 Years, the Bargain and Sale shall be void; he doth Rede-
John mise it accordingly and dies, his Wife brings Dower. The Question was, if the Plaintiff shall be relieved against this Title of Dower. By all the Judges, though it be against Equity and the Agreement of the Husband at the time of the Purchase, that she should have it against the Lessees, for it was intended that they immediately Rede-
upon mised to him as soon as they parted with it, and it is but in nature of a Mortgage, and upon a Mortgage if Land be redeemed, the Wife of the Mortgagee shall not have Dower, and if a Husband takes a Fine *for*

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Coni-

Conissance de Droit come ceo and renders again although it was once the Husband's, yet his Wife shall not have Dower, for it is in him and out of him *quasi uno flatu*, and by one and the same Act; yet in the principal case she shall have Dower, for by the Bargain and Sale the Land is vested in the Husband, and thereby the Wife is intitled to have Dower; and when he redemisseth it upon the former Agreement, yet the Lessees are to receive it subject to this Title of Dower; and it was his folly that he did not joyn another with the Bargainee, and when she is dowerable by Act or Rule in Law, a Court of Equity shall not bar her to claim her Dower, and where no Fraud or Covin is Equity will not relieve. *Cr. Car. 190.*

Tooms and Chandler.

Debt on Obligation to perform Conditions, Payments, Provisoes and Agreements in an Indenture. The Defendant pleaded, That the Indenture contained a Lease by the Defendant to the Plaintiff to be void by Non-payment. The Plaintiff Demurs. *Hale* Chief Justice, the word (Condition) would be idle unless this Bond be effectual: Otherwise, if the word Condition were not in, and at the Mortgagors election to pay or forfeit; but here perhaps the Lessor had no Title, and so it is but requisite the Mortgagee should have his Money. *1 Keb. 437.* But fol. 454. the case was, Debt on Obligation to perform Covenants, Conditions and Provisos in an Indenture. The Defendant pleads, That one Condition was to pay on Mortgage or to be

again, let his in him y one l case in and l, and Dow- ne for- to re- ; and nother s dow- ourt of Dow- Equity

be void, and that he was not bound to perform it. The Plaintiff demurred. *Per Cur.* were it a Condition in Indenture specially recited in the Bond, though thereby the Mortgage were forfeited, the Bond is so too upon non-performance, but being in general to perform all Covenants and Conditions in an Indenture, it binds only to such as are compulsory, not to such Conditions as are at the Parties election to do or not, this being a penalty, and only to perform what are on the part and behalf of the Defendant to be performed, not to perform all that ought to be performed, as was in *Westbrooks and Print's Case*, *Hill. 22. Car. 1. Rot. 116.* and therefore it was adjudged for the Defendant. *Hales* agreed this difference, but *Rainsford* and *Wild* said all is one; and in *3 Keb. 460.* this case of *Tooms and Chandler* was said to be a Debt on Bond to perform Covenants in Indenture of Mortgage to be void on non-payment, and no special Covenant to pay the Money. The Defendant pleaded performance. The Plaintiff demurred. And *per Cur.* Judgment for the Defendant unless the Plaintiff discontinue. *2 Leon. 116.*

Condition to pay on Mortgage or to be void, its at the Mortgagors election.

onditi- nents in d, That he De- y Non- e Chief be idle wise, it d at the it; but and so d have 54. the perform s in an hat one e or to be

Brisoe and Kings case was, Debt upon Obligation conditioned to perform all Covenants, Payments, Articles and Agreements comprised in such a Deed dated, &c. The Defendant shews, that the Deed was a Deed of Feoffment, wherein was contained that he for 100 l. had enfeoffed the Plaintiff in such Lands. In which Deed was a Proviso, that if the Defendant do not pay by the Plaintiff to *J. S. 40 l. to J. D. 40 l. &c.* at such a day that the Grant, Bargain and Sale should be void, and he might re-enter with

Where the Condition of a Bond for performance of Covenants extends to the payment of the Mortgage Money or not.

Covenants to save harmless and to make further assurance. The Defendant pleads, he had performed all the Covenants, Articles and Agreements on his part to be performed. The Plaintiff Assigns the breach, because he did not pay 40 £. at the day according to the Proviso, on which the Defendant demurred, and adjudged for the Defendant, *per tot. Cur.* Forasmuch as there is not any Covenant to pay that Sum, it is a Proviso in advantage of the Feoffor, that if he paid the Money he should have his Land again, and it is in his election to pay the Money, or to lose his Land which is a sufficient loss to him. The Condition of the Obligation does not bind the Defendant to perform other payments, than such which the Defendant is bound by the Deed to perform, for the Obligation was made but for the strengthening of the Deed, and the Deed does not require any compulsory payment to be made, but leaves this to the will of the Defendant, therefore the Condition of the Bond extends not thereto, but extends to perform the other Covenants, as to save harmless from Incumbrances, and from Rents and Arrears of Rents, *Cr. Jac. 281. Relv. 206.* the same Case.

C A P. VII.

A Defeasance on Land forfeited, by way of Covenant. A Defeasance upon a Judgment in Execution for better assurance of Lands mortgaged. A Defeasance, where an Estate is made absolute in Fee without any Proviso of Redemption in the Deed, That upon payment of so much Money as was the consideration Money in the first Deed with Interest within such a time, that then the Grantee in Fee to recover in Fee. Mortgage by way of Demise and Redemise. A. mortgageth for Years to B. who redemise to A. for a lesser Term upon non-payment to be void, Covenant for further assurance, A. levies a Fine to B, if it extinguisheth the Redemise, How it shall be preserved. Mortgage for Years with confirmation by Fine. A Tenant in Tail mortgageth and then suffers a Recovery to make a Joynure, whether the subsequent Recovery shall make good the precedent Mortgage.

THIS Indenture made, &c. Between A. Recital. B. of, &c. of the one part, and C. D. of, &c. of the other part witnesseth, That whereas the said C. D. by his Indenture bearing date, &c. for the considerations therein mentioned did give Grant, Bargain, Sell and Confirm unto the said A. B. his Heirs and Assigns all those Lands, &c. with the Appurtenances, Situate and being in, &c. In which said Indenture there is a Proviso or Condition to this effect, that if the said C. D. his Heirs, Executors or Assigns, or any of them do well and truly pay or cause to be paid

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unto

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Forfeiture.

Defeasance by
way of Cove-
nance.

v. Appts. 47.

Covenant to
Reconvey.

unto the said *A. B.* his Executors, Administrators or Assigns the full Sum of, &c. that then, and from thenceforth the said recited Indenture, and every Covenant, clause, matter and thing therein contained shall be utterly void, and of none effect, as by the said Indenture, it doth more at large appear which said Sum, &c. was not paid at the day and time above limited for the payment thereof according to the effect of the said Proviso, by reason whereof the said Lands, &c. in the said Indenture mentioned are absolutely vested and settled in Law in the said *A. B.* yet nevertheless the said *A. B.* is contented and pleased, and doth Covenant and Grant, to and with the said *C. D.* his Executors, Administrators and Assigns, that if he the said *C. D.* his Executors, Administrators and Assigns, or any of them do well and truly pay or cause to be paid unto the said *A. B.* his Executors, Administrators or Assigns the full Sum of, &c. that then and from thenceforth the said recited Indenture shall be utterly void, and of none effect, the breach made by non-payment of the said Sum of, &c. in the aforementioned Proviso contained, or any thing therein to the contrary notwithstanding. And also on full payment of the said Sum of, &c. at any time within 5 Years next ensuing, he the said *A. B.* his Heirs and Assigns, shall and will at the reasonable Request, Costs and Charges in the Law of the said *C. D.* his Heirs and Assigns, convey and assure unto the said *C. D.* and his Heirs for ever the said Lands, &c. with the Appurtenances in the said recited Indenture, mentioned in such manner and form as shall be by the said *C. D.* his

And deliver up Writings.

THIS Indenture made the day of
&c. Between *A. B.* of, *&c.* of the one
part, and *C. D.* of, *&c.* the other part: Whereas
this present Term of *St. Hillary*, there is a
Judgment obtained against the said *C. D.* at the
Suit of *O. O.* Lessee of the said *A. B.* in a
Plea of Trespass and Ejectment for the
Manor of, *&c.* with all its Rights, Members
and Appurtenances, and certain other Lands
and Tenements, Situate, lying and being
in, *&c.* which said Manor and Premises
were heretofore mortgaged by the said *C. D.*
to Sir *A. B.* Knight deceased. Now it is
hereby concluded and agreed, and the said
A. B. for himself, his Heirs, Executors and
Administrators doth Covenant, Grant and
Agree, to and with the said *C. D.* his Heirs,
Executors and Administrators by these Pre-
sents, that the said *O. O.* shall not take out
any Execution upon the said Judgment a-
gainst the said *C. D.* for the recovery of the
Possession of the said Premises before the last
D 4 day

indentures of Lease and Release, relation being thereunto had, may more at large appear. Now this Indenture witnesseth, and the true intent and meaning of the said Indenture, and of the Parties to the same, and of these Presents, and the said Parties likewise to the same, was and is hereby so declared to be, and the said *A. B.* for himself, his Heirs and Assigns, doth covenant, promise and grant to and with the said *C. D.* his Heirs, Executors and Administrators by these Presents, That if he the said *C. D.* his Heirs, Executors or Administrators, or any of them, shall well and truly pay or cause to be paid unto the said *A. B.* his Heirs or Assigns, the full and just Sum of, &c. of lawful Money of *England*, at or upon the Day of, &c. without any Abatement or Defalcation out of the same for Taxes, Charges, Assessments, or other cause or thing whatsoever, that then and from thenceforth the said *A. B.* his Heirs and Assigns, and all Person and Persons claiming the said Premises in, by or under the said recited Indentures of Lease and Release, or any part thereof, shall and will at the Request, Costs and Charges of the said *C. D.* or his Heirs, transferr, assign and set over the said recited Premises, and every part and parcel of the same so expressed to be granted as aforesaid, together with the said Indentures unto the said *C. D.* and his Heirs, or to such other Person or Persons as he the said *C. D.* shall nominate and appoint, discharged of all Incumbrances by him done or suffered : And that in the mean time from and after full Payment and Discharge of the said Sum of, &c. as aforesaid, and until such Assignment be made that the said *A. B.* and his

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pay the Money.

Power to make
Leases.

his Heirs, and all Persons standing and being seised of the Premises, by, from or under him or them should be seised thereof, and of every part and parcel thereof, in Trust to and for the sole Use, Benefit and Behoof of the said C. D. his Heirs and Assigns, and to and for no other use, intent or purpose whatsoever; and the said C. D. for himself, his Heirs, Executors and Administrators, doth covenant, promise, grant and agree to and with the said A. B. his Heirs and Assigns by these Presents, That he the said C. D. his Heirs, Executors or Administrators, some or one of them, shall and will well and truly pay or cause to be paid unto the said A. B. his Heirs and Assigns the said Sum of, &c. and every part thereof at the Day and Place above mentioned for the Payment thereof, without making any Deductions or Abatements out of the said Sum, or any part thereof, for Taxes, Charges, Assessments or for other Cause, Matter or Thing whatsoever, according to the true intent and meaning of these Presents. And it is hereby declared, concluded and agreed by and between the said Parties, That it shall and may be lawful to and for the said C. D. and his Heirs from time to time and at all times hereafter until default of Payment of the said Sum of, &c. or any part thereof at the Day and Place before limited and appointed for Payment of the same, to make any Lease, Demise, or Grant of all or any the said Messuages, Lands, Hereditaments and Premises in the said in part recited Indentures contained for any term or number of Years whatsoever, so as such Demise, Lease or Grant so to be made be made *bona fide*, and there

there be reserved upon the same the best and most improved yearly Rent that such Messuages and Tenements so to be Leased can truly and *bona fide* be Let for, and so as such yearly Rents so to be reserved be payable or made payable, and be paid unto the Person and Persons that shall be seised of the Reversion of the said Premisses so Leased immediately expectant upon the same Leases to be made. And lastly, It is declared, concluded and agreed by and between all the said Parties to these Presents, That it shall and may be Lawful to, and for the said C. D. and his Heirs to have, hold, occupy and enjoy the said Messuages, Lands, Hereditaments and Premisses, and every part and parcel thereof in and by the said recited Indentures mentioned to be granted, and to receive and take the Rents, Issues and Profits of the same until default of Payment of the said Sum of, &c. or any part thereof at the Day and Place above mentioned for Payment of the same, without the Let or Disturbance of the said A. B. his Heirs or Assigns, and without any Account to him, them or any of them to be had or given for the same. In witness, &c.

A Deed in the nature of a Defeasance of a former absolute Conveyance ; and a Declaration, part of the Premises were the Inheritances of one of the Mortgagors, and other part of another, and both joined as one Security for a Sum of Money, and covenant to make respective Reconveyances upon Payment ; the two Principal Mortgagors covenant to save the former Mortgagee and the other Grantors harmless from the Covenants in the precedent Grant.

Recital.

Mortgage.

Proviso.

THIS Indenture *Quinqu-partite* made, &c. between. A. B. of &c. Esq; of the first part, C. D. of, &c. of the second part, E. F. and G. H. of, &c. of the third part, J. K. of, &c. of the fourth part, and L. M. of, &c. of the fifth part. Whereas by Indenture of Release, bearing date, &c. they the said C. D. E. F. and G. H. in Consideration of 600 l. of lawful, &c. unto them paid and lent by J. E. of, &c. did Give, Grant, Release and Confirm unto the said J. E. in his actual Possession then being by vertue of a Bargain and Sale for the Term of Years therein mentioned, and of the Statute for Transferring of Uses into Possession, and his Heirs and Assigns for ever, All, &c. in the said Indenture of Release, more particularly specified and described. To hold unto the said J. E. his Heirs and Assigns for ever, under a Proviso for Redemption upon payment of the said Sum of 600 l. with Interest thereof unto the said J. E. his Executors, Administrators or Assigns within the compass or at the end of three Years in such manner as the same is thereby limited to be paid as in and by the said

said Indenture of Lease and Release, relation
 being thereunto had may appear. And
 whereas by Indentures of Lease and Release,
 the Lease bearing date the second, and the
 Release bearing date the third day of, &c.
 reciting as in and by the same or one of them
 is recited, and that the said Sum of 600*l.* was
 not then paid, so that the Estate aforesaid
 conveyed unto the said *J. E.* and his Heirs,
 was become absolute, he the said *J. E.* for
 and in Consideration of the Sum of 600*l.* to
 him paid by the Direction of the said *C. D.*
 and also they the said *C. D. E. F.* and *G. H.*
 in Consideration of like Money to them paid
 did Give, Grant, Bargain and Sell, Remise,
 Release, quit Claim and Confirm unto the
 said *L. M.* and his Heirs for ever, all and
 every the aforesaid Messuages, Clofes, &c.
 and other Hereditaments and Premisses in and
 by the said first mentioned Indentures of
 Lease and Release formerly conveyed unto
 the said *J. E.* as aforesaid, with all and every
 of their Rights, Members, Privileges and
 Appurtenances, to hold unto the said *L. M.*
 his Heirs and Assigns for ever, under a Pro-
 viso or Condition in the said last mentioned
 Indenture of Release contained for Redem-
 ption of the said Premisses on payment of
 750*l.* of, &c. unto the said *L. M.* his, &c.
 at several Days therein and thereby limited,
 which are all long since past and expired.
 And whereas the aforesaid 750*l.* was not paid
 according to the Limitation of the said last
 mentioned Proviso or Conveyance, where-
 by the said Conveyance unto the said *L. M.*
 is become absolute. And whereas by Inden-
 tures of Lease and Release, the Lease bearing
 Date the Second, and the Release the Third

Day

Recital of a
 Title of one of
 the Grantors
 who was a
 Mortgagee.

The Law of Mortgages:

Intended to be
only a Security.

Estates of two
Persons joined
for Security.

Day of, &c. the Release being of three Parts made between the said C. D. and M. his Wife, E. F. G. H. and I. K. of the First Part, and the said L. M. of the Second Part, and the said A. B. of the Third Part, and by Fine thereby covenanted to be levied they the said C. D. and M. his Wife, &c. for and in Consideration of the Sum of 1000 l. of like lawful, &c. unto them in hand paid by the said A. B. did Give, Grant, Bargain, Sell, Alien, Enfeoff, Release and Confirm unto the said A. B. and his Heirs the said Messuages, &c. above mentioned: And also all that, &c. To hold unto the said A. B. his Heirs and Assigns for ever, as in and by the said last mentioned Indentures and Fine, relation, &c. And whereas the said several Messuages, &c. and Premisses are intended by all the Parties to these Presents, to be a Security only to the said A. B. for the Sum of 1000 l. and the Interest thereof after the rate of 5 l. per Cent. per Annum, payable and to be paid as herein after is mentioned. And whereas all the Premisses by the said Indentures Tripartite of Release and Lease next immediately preceding the same mentioned (except the Meadow called the, &c. at and before the time of the Executing the said Indenture Tripartite (was the proper Estate and Inheritance of him the said I. K. and by particular Agreement between them the said I. K. and C. D. added to the said other Premisses to make a more full and ample Security for the said Sum of 1000 l. and Interest, &c. out of which said Sum of 1000 l. was paid the Sum of, &c. in full Satisfaction of all Moneys by vertue of the said Indenture of the Third Day of, &c. due and payable unto

unto him the said *E. L.* who together with the said *E. F.* and *G. H.* at the Request and by the Direction and Appointment of the said *C. D.* and *I. K.* executed and joined in the Execution of the Conveyance of all the said Premises unto the said *A. B.* and his Heirs. Now this Indenture witnesseth, and the said *A. B.* for himself, his, &c. and for every of them doth Declare, Covenant and Agree to *Proviso by way of Covenant.* and with the said *C. D.* and *I. K.* and either of them, their and either of their, &c. by these Presents, That if the said *C. D.* and *I. K.* and either of them, their and either of their, &c. or any of them shall well and truly pay or cause to be paid unto the said *A. B.* his, &c. the full Sum of 1100 *l.* of, &c. at or in the, &c. in manner and form following, that is to say, &c. and that without any Deduction, Defalcation or Abatement whatsoever, for or in respect of any Taxes, Rates, Assessment, Charges or Impositions whatsoever, that then and from thenceforth, and at all Times afterwards the said Indenture Tripartite, and the Estate thereby, and the said intended Fine granted and perfected shall cease, determine, and be utterly void. The said Indenture Tripartite, or any thing therein contained to the contrary thereof in any wise notwithstanding. But if Default shall be made in any one of the said Payments contrary to the Form aforesaid, then the same to remain in full force and virtue; and the said *C. D.* and *I. K.* for themselves and either of their, &c. covenant to pay the said Sum of 1100 *l.* &c. and the said *A. B.* for himself, his, &c. doth covenant, &c. to and with the said *C. D.* and *I. K.* their and either of them, their and either of their, &c. and

After default
Covenant to
enjoy respec-
tively.

Upon payment
to deliver up
Writings,

And Reconvey.

and every of them by these Presents in man-
ner and form following, (that is to say)
That until failure or default shall happen to
be made of Payment of the said several Sums
of Money, or one of them, contrary to the
Covenant or Agreement above written, they
the said C. D. and I. K. their Heirs and As-
signs shall and may peaceably and quietly
have, hold and enjoy the said Messuages,
&c. and Premises in the said Tripartite In-
denture mentioned and recited, and take the
Rents, Issues and Profits thereof according
to their respective former Estates and Inte-
rests therein to their own and respective Use
and Uses, without any lawful Lett, &c.
And also that he the said A. B. his, &c. upon
Receipt of the said Sum of 1100 l. at the
Days and Times above limited, shall and will
Surrender, Release or Deliver up the said
Indentures of Lease and Release unto them
the said C. D. and I. K. or one of them, their
or one of their Heirs or Assigns, and at the
reasonable Request, Costs and Charges of
them the said C. D. and I. K. their Heirs or
Assigns, shall and will make such Reconvey-
ance or Release of the Premises aforesaid,
with the Appurtenances, unto them the said
C. D. and I. K. their respective Heirs and As-
signs (*viz.*) of all the said Premises, except
the said, &c. aforesaid unto the said C. D. his
Heirs and Assigns, and of the said Meadow
unto him the said I. K. his Heirs or Assigns,
or to such other Person or Persons as he,
they or any of them shall direct or appoint,
as they the said C. D. and I. K. or either of
them, their or either of their Counsel, &c.
And from and after Payment of the said Sum
1100 l. and until such Reconveyance or Re-
lease

lease executed, that he the said *A. B.* his Heirs and Assigns, or other Conuzee or Conuzees in the Fine by the said Indenture Tripartite covenanted to be levied, his or their Heirs shall and will from and after such payment as aforesaid stand, and be seised of the said Premises, and the said Fine shall from thenceforth enure to the use following (that is to say) as to all the said Premises except the said, &c. to the use and behoof of the said *C. D.* his Heirs and Assigns for ever. And as to the said, &c. to the use and behoof of the said *J. K.* his Heirs and Assigns for ever, and to, and for no other, &c. And lastly, the said *C. D.* and *J. K.* for themselves, &c. do Covenant, &c. to, and with the said *E. F. G. H.* and *L. M.* and every of them, their, and every of their, &c. by these Presents, that they the said *C. D.* and *J. K.* their, and either of their, &c. shall and will from time to time, and at all times hereafter save, defend, keep-harmless and indemnified, them the said *E. F. G. H.* and *L. M.* and every of them, their, and every of their Persons Goods, Chatels, Lands and Tenements, of, and from the Grants, Covenants and Agreements in the said Indenture Tripartite contained; and of, and from all Actions, Suits, Costs, Charges and Damages whatsoever, touching or concerning the same, Actions, Suits, Costs and Damages for his, her or their wilful breach, or concerning any the said Grants or Agreements, or any of them only excepted. In witness, &c.

Until Reconveyance to the use of the Fine and the Conuzees to stand seised.

The principal Mortgagors Covenant to secure the former Mortgage, &c.

Mort.

Mortgage by Demise and Redemise.

A. mortgaged for Years to B. who Redemised to A. upon non-payment to be void, for a lesser Term, with Covenant in the Mortgage, that A. should make further assurance, and afterwards A. levied a Fine to B. which *per Cur.* extinguisheth the Redemise of B. But if it had been exprest in the Writing or Agreement, that the Redemise of B. should not be extinguished, it would not be extinguished, and if there were any Agreement that it should be in confirmation, the construction of Law will preserve it. 3 Keb. 432. 452. Heale and Kerkham cited by Hail in How and Stile's Case.

By Bargain and Sale in Fee and Redemise.
Cr. Jac.

President of Mortgage by Demise and Redemise.

THIS Indenture made the, &c. Between A. B. of, &c. and C. D. of the other part witnesseth, That the said A. B. for, and in consideration of the Sum of 500*l.* of lawful, &c. to him in hand paid, &c. the Receipt whereof, &c. hath demised, granted, bargained and sold; and by these Presents doth Demise, Grant, Bargain and Sell unto the said C. D. his Executors, Administrators and Assigns, all that, &c. and all Lands, Meadows, Pastures, Privileges, Advantages, Liberties, Hereditaments and Appurtenances whatsoever to the said Manor and Premises belonging, or in any wise appertain.

The Law of Mortgages.

51

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before accepted, reputed, taken or known
as part, parcel or member thereof, or of
any part thereof, or otherwise held, used,
occupied or enjoyed as part, parcel or mem-
ber thereof, or any part thereof: And also
all the Rents and yearly Profits, Reservati-
on and Service reserved, due or payable by
or upon any Demise, Grant or Lease of the
Premisses, together with the Counter-parts
of all such Demises, Leases or Grants. To
have and to hold the said, &c. unto the said
C. D. his Executors, Administrators and As-
signs from the making hereof, for, and dur-
ing the full Term of 1000 Years, fully to
be compleat and ended, without impeach-
ment of, or for any manner of Wast, Yield-
ing one *Pepper-corn*, &c.

A. B. Covenants with C. D. that he is law-
ful owner, and seised in Fee; and then the
lessee shall peaceably enjoy, except Lea-
ses in being.

The Redemise.

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A. B.
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THIS Indenture made, &c. between C.
D. of, &c. and A. B. of, &c. of the o-
ther part witnesseth; That the said C. D. for
and in Consideration of the Condition, Co-
venants, Proviso and Agreements herein
after mentioned, contained and expressed,
and for divers other good Causes and Con-
siderations him moving, Hath demised,
granted, and to Farm-letten, and by these
presents doth Demise, Grant, and to Farm-
let unto the said A. B. his Executors, Admi-
nistrators and Assigns all, &c. all and singu-
lar, which said Premisses were by Inden-
ture

The Law of Mortgages.

ture bearing date the, &c. day of this instant *March*, for the consideration of 60 *l.* demised, granted, bargained and sold by the said A. B. unto the said C. D. his, &c. from the making of the said Indenture for the full Term of 1000 Years, as by the said Indenture more plainly may appear. To have and to hold, all and singular the said, &c. from the day of the date of this present Indenture, for, and during the full end and term of 999 Years from thenceforth next ensuing, and fully to be compleat and ended.

And the said A. B. for himself, his Heirs, Executors and Administrators doth Covenant and Grant, to and with the said C. D. his Executors, &c. by these Presents, That he the said A. B. his Heirs, Executors, Administrators or Assigns, some or one of them shall and will well and truly pay or cause to be paid unto the said C. D. his Executors, Administrators and Assigns, at or in the now dwelling House of, &c. the full Sum of 560 *l.* of, &c. in manner and form following, &c. without abatement for Taxes, &c.

Provided always, That if the said A. B. his Heirs, Executors and Assigns, shall make any default in payment of the said Sum of 560 *l.* or any part thereof, at the day and place herein before covenanted for payment thereof; that then and from thenceforth this present Indenture, and the Demise and Grant hereby made and granted shall cease determine and be utterly void, and of no effect, and that then and from thenceforth it shall and may be lawful, to, and for the said C. D. his Executors, Administrators and Assigns, into the said, &c. and Premises, and every

every part thereof to re-enter, and the same to have again, repossess and enjoy, as in his former Estate, any thing herein contained in any wise notwithstanding. And further, it is hereby covenanted, granted, concluded and agreed, by and between the said Parties to these Presents, and the said C.D. for himself, his, &c. doth Covenant, Promise and Agree, to and with the said A. B. his, &c. that if he the said A. B. his, &c. or any of them shall, and do well and truly pay, or cause to be paid unto the said C. D. his, &c. the said Sum of 560 l. at the respective days and place, and in such sort, manner and form as the same is herein covenanted to be paid; That then and from thenceforth, and immediately after the said last payment made the said Indenture of Demise of the said Premises made to the said C. D. of the Premises for 1000 Years, bearing date of this Instant *March*, and all the Estate and Term thereby granted shall cease, determine and become void, any thing before contained to the contrary thereof in any wise notwithstanding, And that then, and in such case upon the delivery up unto the said C. D. his, &c. of that part of the said Demise of 1000 Years, and of these Presents which is under the Hand and Seal of the said C. D. the said C. D. his Executors, Administrators and Assigns, shall and will upon request deliver up unto the said A. B. his Heirs or Assigns, that part of the said Demise of 1000 Years, and of these Presents which is under the Hand and Seal of him the said A. B. Covenants to make further Assurance if default shall be made of the 560 l.

To be cancelled.

The Law of Mortgages.

C. D. Covenants, that A. B. his Executors, Administrators and Assigns, paying and performing all the Payments, Covenants, Grants and Agreements, herein contained on their part to be paid and performed, shall quietly and peaceably hold, occupy and enjoy all and singular the said, &c. and the Premises with the Appurtenances hereby demised, or mentioned to be demised without the let, trouble or interruption of the said C. D. his Executors, Administrators or Assigns, and free and clear from all Incumbrances whatsoever, had made or done by him the said C. D. In witnesses, &c.

*Mortgage for Years with Confirmation by Fine,
with several uses of the Fine.*

THIS Indenture made, &c. between A. B. of, &c. of the one part, and C. D. of, &c. and E. F. &c. of the other part witnesseth: That for and in consideration of the Sum of, &c. of lawful Money of *England* to him the said A. B. in hand paid by the said C. D. and E. F. or one of them before the sealing and delivery of these Presents, the Receipt and Payment whereof the said A. B. doth by these Presents acknowledge, and thereof, and of every part and parcel thereof, &c. he the said A. B. hath granted, demised, bargained and sold, and by these Presents doth Grant, Demise, Bargain and Sell unto the said C. D. and E. F. their Executors, Administrators and Assigns; all that, &c. together with all and singular the Messuages, Cottages, Edifices, Buildings, Barns, Stables, Out-house, Orchards, Gardens,

dens, Meadows, Leasows, Pastures, Feedings, Woods, Under-woods, Waters, Water-courses, &c. to the said Messuages, Hereditaments and Premisses, belonging or appertaining, or to, or with the same used, &c. and the Reversion and Reversions, &c. To have and to hold the said Messuages, &c. unto the said C. D. and E. F. their Executors, Administrators and Assigns, from henceforth, for and during the Term, and unto the full end and term of 500 Years next ensuing, and fully to be compleat and ended, without impeachment of, or for any manner of Waste, Yielding and paying, &c. And it is covenanted, concluded and agreed by and between the said Parties to these Presents, and the said A. B. for himself, his Heirs, Executors and Administrators doth Covenant, Promise and Agree, to and with the said C. D. and E. F. their Heirs and Assigns by these Presents, that he the said A. B. shall and will on this side, and before the end of *Hillary* Term next ensuing the date hereof in due form of Law, levy and acknowledge before her Majesty's Justices of the Court of *Common Pleas* at *Westminster*, or before some other Person or Persons in that behalf lawfully authorized, one or more Fine or Fines, *sur Conusance de droit come ceo*, &c. with Proclamations thereunto to be had and made according to the usual course of Fines with Proclamations for assurance of Lands in such cases used, and the form of the Statute in that behalf made and provided, unto the said C.D. and E.F. and their Heirs, or the Heirs of one of them, of all the said, &c. and all and singular other the Premisses herein before demised, granted, bargain-

bargained and sold, or meant mentioned, or intended to be hereby demised, granted, bargained and sold, and of every part and parcel thereof, with their and every of their Appurtenances in the said Fine or Fines, to be by the name or names of, &c. or by such other convenient name or names, additions, descriptions, quantities, qualities, contents and numbers of Acres, or otherwise in such manner and form as by them the said C. D. and E. F. or either of them, their, or either of their Heirs or Assigns, or any of them, their, or any of their Council learned in the Law shall be thought fit and convenient: And it is declared and agreed, by and between all the said Parties to these Presents, and in particular the said A. B. doth for himself, his Heirs and Assigns, declare and agree that the said Fine so as aforesaid, or in any other manner to be had and executed, and all and every other Fine and Fines, Conveyances and Assurances had and executed, or to be had and executed by or between the said Parties to these Presents, or any of them of the said Lands and Premises, and every part and parcel thereof, be and enure, and the said C. D. and E. F. Cognizees in the said Fine, and their Heirs shall stand and be seised of the said Premises, and every part thereof with their Appurtenances, to the use and behoof of them, the said C. D. and E. F. their Executors, Administrators and Assigns, for and during all the said Term of 500 Years, for the better, more perfect and absolute confirmation, corroboration, strengthening and security of the said Term and Estate hereby granted, and every part thereof during the said Term of

of 500 Years herein before mentioned and expressed, and from and after the expiration or other determination of the said term of 500 Years herein before mentioned, to the only use and behoof of the said A. B. his Heirs and Assigns forever, and to and for no other uses, intents and purposes whatsoever. Provided always, and upon this Condition nevertheless, That if he the said A. B. his Heirs, Executors or Administrators, or any of them, do and shall well and truly pay or cause to be paid unto the said C. D. and E. F. their Executors, &c. the full Sum of, &c. at or upon the which shall be in the Year of our Lord God without making or demanding any Deduction or Abatement for or by reason of any Taxes, Charges or Payments issuing out of or charged or imposed on the Premises or any part or parcel thereof, or upon the said Sum of, &c. by any Act or Acts of Parliament made or to be made or otherwise howsoever, that then and from thenceforth this present Indenture, and the Estate and Term hereby granted, and the said use of the said Fine or Fines so covenanted to be levied as aforesaid, being limited to them the said C. D. and E. F. their Executors, Administrators and Assigns for and during the said Term of 500 Years for the Confirmation and better Security of the said Estate and Term in the Premises hereby granted or mentioned or intended to be granted, shall cease, determine, and be utterly void; Any thing herein contained to the contrary in any wise notwithstanding.

Goddard

Goddard versus Complin.

Tenant in Tail demiseth his Lands for 99 Years by way of Mortgage, and after Marries, and in consideration thereof, and of 500*l.* Portion, suffers a Recovery to enable him to settle a Jointure, and afterwards takes up more Money of the Mortgagee upon the former Security.

Two Questions were in this Case.

1. Whether the Defendant shall be allowed Money lent after the Recovery and Marriage?

The Court declared, If the Defendant had no notice of the Jointure when he lent the new Money, he must be allowed it.

2. Whether this Recovery shall enure to make good the Mortgage, it being designed for the Marriage Settlement only?

And it was declared, That the subsequent Recovery shall enure to make good precedent Acts, and she is in by the Act of her Husband. *Ch. Cases 119. Goddard and Complin.*

Recital of an Original Lease from the Merchant-Taylors Company of a Manor; Assignment thereof for a Trust-Settlement in Consideration of the Wife's having relinquished her Jointure, the Man and Wife Mortgage it to N. V. for 700 l. who had a Fine sur concessit. Assignee dies, and leaves Executors, the Mortgage Money not being paid. The Mortgagor and his Trustees and the Executors join in a Mortgage to T. C. and T. S. for a further Sum of 900 l. and after for a further Sum, and to pay off the other Security, They all Mortgage to Sir E. R. With several good Clauses for removal of Mortgages.

THIS Indenture made, &c. between J. F. the Widow and Relict of F. F. late of, &c. deceased, W. F. the only Son and Heir of the said F. F. by the said J. and T. B. of, &c. of the First part; Sir G. R. of, &c. of the Second part; and T. S. Esq; and C. H. of, &c. of the Third part. Whereas the Master and Wardens of the *Merchant Taylors* of the Fraternity of St. *John Baptist* in the City of *London*, by their Indenture of Lease under their Common Seal, dated, &c. 1664, and in the 16th Year, &c. for the Considerations therein mentioned, did Demise, Lease, Betake and to Farm Let unto the said F. F. all that their Manor or Lordship of, &c. in the, &c. To have and to hold the said Manor and other the Premises in and by the said recited Indenture mentioned to be Demised with the Appurtenances unto the said F. F. his Executors and Assigns from the Feast of, &c. unto the full end and term, and for and during

Original Lease recited.

The Law of Mortgages.

during the Term of Sixty one Years from thence next coming, and fully to be compleat and ended, Yielding and paying therefore yearly, during the said Term, unto the said Master and Wardens, their Successors and Assigns, or certain Attorney, within their Common Hall commonly called the *Merchant Taylors Hall* in *London*, the yearly Rent of, &c. at two usual Feasts, &c. and under a certain Covenant, Clause or Agreement in the said recited Indenture of Lease contained, for the payment every Year yearly, during the said Term, unto J. M. of *London*, Gent. common Clerk of the said Society during his Life, and after his Death to such Person and Persons as the said Master and Wardens, and their Successors, shall nominate and assign to keep Courts there as therein is expressed for and in the Name of the Stewards Fee, the Sum of 20 *l.* of like lawful Money, as in and by the said recited Indenture of Lease, &c. And whereas in and by one other Indenture, being an Indenture of Assignment dated the 20th day of the same Month of *December*, in the said Year of our Lord 1664, made or mentioned to be made between the said F. F. and J. his then Wife of the one part, and the said T. B. and E. F. of *London* Esq; (since deceased) of the other part, the said F. F. did assign and set over the said Manor to the said T. B. and E. F. their Executors, Administrators and Assigns for the then residue of the said Term of 60 Years upon several Trusts, and in particular in trust of and for the benefit of the said J. F. in case she should happen to survive and overlive the said F. F. and likewise in Trust for the said W. F. or such Person as shall happen to be

Heir

Assignment in
nature of a
Trust Settlement.

Heir Male of the Body of the said W. F. at the time of the decease of the Survivor of them the said F. F. and J. in case the said W. F. or any Heir Male of his Body should be living at the time of the decease of the Survivor of them the said F. F. and J. But in case the said J. should survive and outlive the said F. and W. and that the said W. shall happen to have no Issue Male of his Body living at the time of the decease of the said J. then the said Premises and Trust thereof to be and remain for the sole use and benefit of the said J. and of her Executors, Administrators and Assigns, as by the said last recited Indenture of Assignment, and amongst several other the Trusts, Articles, Clauses and Agreements therein contained it may appear, which said last recited Indenture was in truth made in Consideration that the said J. at the request and for the particular Conveniency, and to comply with the Occasions of the said F. F. had quitted and relinquished her Jointure which was settled upon her by the said F. F. before the Marriage between the said F. and J. and in consideration of such Marriage, and of the Marriage Portion of the said J. received by the said F. and had joined with the said F. in a Conveyance of her said Jointure, which was of a much greater yearly value than the said Manor and Premises herein before mentioned ; and the said Premises so assigned were by Agreement to be in lieu and place of and a satisfaction for such a Jointure, altho there be no mention of any the said Considerations, Matters or Things therein particularly expressed. And whereas after the making and executing of the last before recited Indenture of Assignment,

ment, the said F. F. having occasion to borrow and take up at Interest of one N. V. of *London*, Gent. the Sum of 700 *l.* did prevail with the said J. to consent and agree to give Directions to the said T. B. and E. F. that they should assign over their Estate in Law in the said Premises, and their Term therein, for the securing the Repayment of the said 700 *l.* with the Interest thereof, he the said F. F. undertaking to repay the said Moneys, and upon the repayment thereof to procure the said Premises and the Term thereof to be reconveyed unto the said T. B. and E. F. their Executors, Administrators and Assigns, subject to the same Trusts on the Behalf and for Benefit of the said J. as the same were then subject in the hands of the said T. B. and E. F. Whereupon in and by, one other Indenture of Assignment, dated the 20th Day of the same Month of *December*, *Anno Dom.* 1664. and by Fine *sur concessit* thereupon had and levied in the Term of *St. Hillary* then next following, for and in Consideration of 700 *l.* therein mentioned to be paid to the said F. F. by the said N. V. and other the Considerations therein expressed, the said F. F. and J. his then Wife, and the said W. F. T. B. and E. F. did Grant and Assign unto the said N. V. his Executors, Administrators and Assigns, the said Manor, &c. and all other the several and respective Premises in the said several and respective before recited Indentures mentioned; and all the Estate, Right, Title, Interest, Term of Years, Claim and Demand of them the said F. F. J. his then Wife, W. F. T. B. and E. F. and every of them, of, in and to the said Manor and Premises and every part thereof, together

Baron & Feme
and their Trustees Mortgage.

together with the said Original recited Indenture of Demise, and all mean Assignments touching the same. To hold unto the said N. V. his Executors, Administrators and Assigns for and during all the rest and residue of the said Term of 61 Years then to come and unexpired, under a Proviso or Condition nevertheless for the making void thereof upon payment by the said F. F. and W. F. their Heirs, Executors, Administrators or Assigns unto the said N. V. his Executors, Administrators or Assigns of the full Sum of 742 *l.* at the Place and on the several Days and Times therein mentioned and not long since past, as by the said last recited Indenture and Fine relation being thereunto had it also may more at large appear. And whereas the said Sum of 742 *l.* mentioned in the said recited Proviso or Condition in the said last recited Indenture of Assignment contained was not paid on the Days and Times therein limited for the Payment thereof, by reason whereof the said Condition became broken, and the said Estate and Term of the said N. V. of and in the said Premises became absolute, after which the said N. V. having made his Last Will and Testament, and thereof made E. V. N. L. and I. L. all of London, Merchants, his Executors, departed this Life, after whose Death the said F. F. ^{Assignes make} his Executors. having occasion for a further Sum of Money, prevailed with the said J. to consent and agree and to give directions to the said T. B. and E. F. to join with the said Executors of the said N. V. in Assigning and Transferring the said Premises, and the then residue of the said Term therein for the then raising and securing of such Moneys as the said F. had then

ment, the said F. F. having occasion to borrow and take up at Interest of one N. V. of *London*, Gent. the Sum of 700 *l.* did prevail with the said J. to consent and agree to give Directions to the said T. B. and E. F. that they should assign over their Estate in Law in the said Premises, and their Term therein, for the securing the Repayment of the said 700 *l.* with the Interest thereof, he the said F. F. undertaking to repay the said Moneys, and upon the repayment thereof to procure the said Premises and the Term thereof to be reconveyed unto the said T. B. and E. F. their Executors, Administrators and Assigns, subject to the same Trusts on the Behalf and for Benefit of the said J. as the same were then subject in the hands of the said T. B. and E. F. Whereupon in and by, one other Indenture of Assignment, dated the 20th Day of the same Month of *December*, *Anno Dom.* 1664. and by Fine *sur concessit* thereupon had and levied in the Term of *St. Hillary* then next following, for and in Consideration of 700 *l.* therein mentioned to be paid to the said F. F. by the said N. V. and other the Considerations therein expressed, the said F. F. and J. his then Wife, and the said W. F. T. B. and E. F. did Grant and Assign unto the said N. V. his Executors, Administrators and Assigns, the said Manor, &c. and all other the several and respective Premises in the said several and respective before recited Indentures mentioned; and all the Estate, Right, Title, Interest, Term of Years, Claim and Demand of them the said F. F. J. his then Wife, W. F. T. B. and E. F. and every of them, of, in and to the said Manor and Premises and every part thereof, together

Baron & Feme
and their Trustees
Mortgage.

together with the said Original recited Indenture of Demise, and all mean Assignments touching the same. To hold unto the said N. V. his Executors, Administrators and Assigns for and during all the rest and residue of the said Term of 61 Years then to come and unexpired, under a Proviso or Condition nevertheless for the making void thereof upon payment by the said F. F. and W. F. their Heirs, Executors, Administrators or Assigns unto the said N. V. his Executors, Administrators or Assigns of the full Sum of 742 l. at the Place and on the several Days and Times therein mentioned and not long since past, as by the said last recited Indenture and Fine relation being thereunto had it also may more at large appear. And whereas the said Sum of 742 l. mentioned in the said recited Proviso or Condition in the said last recited Indenture of Assignment contained was not paid on the Days and Times therein limited for the Payment thereof, by reason whereof the said Condition became broken, and the said Estate and Term of the said N. V. of and in the said Premises became absolute, after which the said N. V. having made his Last Will and Testament, and thereof made E. V. N. L. and I. L. all of London, Merchants, his Executors, departed this Life, after whose Death the said F. F. Assignees make his Executors. having occasion for a further Sum of Money, prevailed with the said J. to consent and agree and to give directions to the said T. B. and E. F. to join with the said Executors of the said N. V. in Assigning and Transferring the said Premises, and the then residue of the said Term therein for the then raising and securing of such Moneys as the said F. had then

The Mortgage
and the Trust-
tees and the
Executors join
in a Mortgage
for a further
Sum.

then occasion to take up, as well for the Payment of what was then due upon the Security of the said Premises unto the Estate of the said N. V. as for his own particular Occasions, he the said F. F. promising and undertaking to repay all such Moneys as should be so taken up, and to procure said Premises to be reconveyed to the said T. B. and E. F. their Executors and Assigns, subject to the same Trusts on the behalf and for the Benefit of the said J. as the same were formerly subject in the hands of the said T. B. and E. F. Whereupon in and by one other Indenture of Assignment, being an Indenture Tripartite, dated the, &c. and made between them the said F. F. and J. his Wife, W. F. T. B. and E. F. of the first Part; the said E. V. N. L. and I. L. of the second Part, and I. C. and T. S. of *London*, Gent. of the third Part, in Consideration of 700 *l.* paid to E. V. W. L. and I. L. and of the further Sum of 400 *l.* paid to the said F. F. by the said I. C. and T. S. the said F. F. and J. his then Wife, W. F. T. B. and E. F. and by their Appointment the said E. V. N. L. I. L. did Bargain, Sell, Assign and Set over unto the said I. C. and T. S. their Executors, Administrators and Assigns the said Manor, &c. and all and singular other the Premises in the said several and respective herein before recited Indentures and Fine mentioned, with their and every of their Appurtenances, and all the Estate, Right, Title, Interest, Term of Years then to come, Trust, Claim and Demand whatsoever of them the said F. F. J. his then Wife, W. F. T. B. E. F. E. V. N. L. and I. L. and every of them, of, in and to the same. To hold unto the said I. C. and T. S.

T. S. their, &c. for all the rest and residue of the said Term of 61 Years as were then to come and unexpired, under an Agreement on the part the said I. C. and T. S. for Reconveying and Reassigning the Premises unto the said T. B. and E. F. their Executors and Assigns, upon payment by the said F. F. and W. F. or either of them, their or either of their Heirs, Executors, Administrators or Assigns, unto the said I. C. and T. S. their Executors, Administrators or Assigns the Sum of 1648 *l.* at the Place and on the Day and Time therein mentioned, as by the said Indenture Tripartite it also may appear. And whereas the said Sum of 1648 *l.* mentioned in the said Agreement contained in the said last recited Indenture, was not paid, whereby the Estate of the said I. C. and T. S. of and in the said Premises became absolute and discharged of the said Agreement. And whereas afterwards the said F. F. having occasion for a further Sum of Moneys towards the paying what was due to the said I. C. and T. S. upon the Security of the said Premises, he the said F. F. did farther prevail with the said J. to consent and agree, and likewise to give directions to the said T. B. and E. F. to join with the said I. C. and T. S. in the Transferring and Assigning of the said Premises, and of the then residue of the said Term therein, for the raising of such Moneys as the said F. F. then desired to raise upon the Security of the same Premises, he the said F. F. undertaking to repay all such Moneys as should be so taken up, and to procure the said Premises to be Reconveyed to the said T. B. and E. F. subject to the same Trusts for the Benefit of the said J.

The Law of Mortgages.

The Mortga-
gor, Mortgagee
and Trustees
take up a fur-
ther Sum.

as the same were formerly subject as afore-
said. Whereupon in and by one other In-
denture of Assignment, being an Indenture
Tripartite, dated the, &c. and made between
the said F. F. the said J. his then Wife, W. F.
T. B. and E. F. of the first Part, the said I. C.
and T. S. of the second Part, and the said
Sir G. R. by the Name of G. R. of *London*,
Merchant, of the third Part, in Considera-
tion of the Sum of 1500 *l.* Sterling unto the
said I. C. and T. S. by the said Sir G. R. and
of 100 *l.* Sterling by the said F. F. paid unto
the said I. C. and T. S. and of 5 *s.* apiece to
the said F. F. and the said J. and the said
W. F. T. B. and E. F. by the said Sir G. R.
likewise paid, the said F. F. and the said J.
the said W. F. and also by their direction and
appointment the said T. B. E. F. I. C. and
T. S. did Bargain, Sell, Assign and Set over
unto the said Sir G. R. their Executors, &c.
the said Manor, &c. and all the Estate, &c.
of them the said F. F. J. his then Wife, W. F.
T. B. E. F. I. C. and T. S. and every of
them, of, in and to the same. To hold un-
to the said Sir G. R. his Executors, Admini-
strators and Assigns from thenceforth, for,
and during all the rest and residue of the said
Term and Time of 61 Years then to come
and unexpired, under an Agreement on the
part of the said Sir G. R. for Reconveying
and Reassigning the Premises to the said T.
B. and E. F. their Executors, &c. upon pay-
ment made by the said F. F. and W. F. or
either of them, their or either of their Heirs,
Executors, Administrators or Assigns unto the
said Sir G. R. his Executors, Administrators
or Assigns of the Sum of 1590 *l.* of lawfully
&c. at the Place and at the several Days and
Times

Times therein limited for the payment thereof, and now long since past, and in manner and form as the same is therein limited to be paid as by the said herein last recited Indenture of Assignment relation being thereunto had, it also much more at large appeared. And whereas the said Sum of 1590 *l.* in the said last Indenture mentioned was not paid unto the said Sir G. R. &c. whereby the Estate of the said Sir G. R. of and in the said Premises is become absolute and discharged of the said Agreement in the said last recited Indenture mentioned. And the said F. F. and likewise the said E. F. are both of them since dead, and the said J. F. is desirous and hath agreed to pay in the said Moneys due unto the said Sir G. R. upon the Security of the said Premises, to the intent to have the said Premises and the said Estate and Term therein Conveyed and Setled subject to the several Trusts herein after limited, according to the true intent and meaning of these Presents. And the said J. F. hath been necessitated for the paying and discharging of the said Moneys due upon the said Security to borrow and take up at Interest of and from A. B. of, &c. the full and just Sum of 200 *l.* Sterling, for the Securing the Repayment of which with Interest at a time now to come the said J. hath entred into a Bond of the penal Sum of 400 *l.* Sterling, bearing even Date with these Presents. Now these Presents witness, that for and in Consideration of the several and respective Sums of 5 *s.* apiece by the said T. S. and C. A. severally and respectively in hand paid unto the said Sir G. R. J. F. W. F. and T. B. the several and respective Receipts and Payment whereof

they the said Sir G. R. J. F. W. F. and T. B. do by these Presents severally and respectively acknowledge, and thereof and of every part thereof do, and each and every of them doth Release and Discharge the said T. S. and C. A. their Executors, Administrators and Assigns, and each and every of them by these Presents, and likewise for and in Consideration of the further, full, and just Sum of, &c. Sterling, by the said J. F. in hand likewise paid unto the said Sir G. R. in full Payment and Satisfaction of and for all such Moneys as are any ways due unto him upon the Security of the said Premisses, or by force and vertue of the said herein last before recited Indenture of Assignment, or any thing therein contained, the Receipt and Payment of which said last mentioned Sum of, &c. he the said Sir G. R. doth hereby accordingly acknowledge, and thereof, &c. they the said J. F. and W. F. and also by their and each of their Direction and Appointment the said T. B. and Sir G. R. have, and each and every of them hath Bargained, Sold, Assigned, Transferred and Set over, and by these Presents they and each and every of them do and doth fully, clearly and absolutely Bargain, Sell, Assign, Transfer and Set over unto the said T. S. and C. A. their Executors, &c. the said Manor, &c. and all and every other the said severall and respective Premisses before mentioned to be Demised, Granted and Assigned in and by the said severall and respective before recited Indentures and Fine, or any of them, and every part and parcel of the same, with their and every of their Appurtenances, and the Reversion and Reversions, Remainder and Remainders.

remainders, Rents and Yearly or other Profits of all and singular the said Premisses, and every part and parcel of the same. And all the Estate, Right, Title, Interest, Property, Term of Years yet to come and unexpired, Trust, Claim and Demand whatsoever as well in Law as in Equity of them the said J. F. W. F. T. B. and Sir G. R. and of each and every of them in, unto, and out of the said Premisses, and unto and out of every part and parcel of the same by force and vertue of the said several before recited Indentures and Fine, or either or any of them, or otherwise howsoever, together with the said several before recited Indentures, and the Chyrography of the said Fine, and all mean Assignments, Deeds and Writings touching and concerning the same now in the respective Hands of them the said J. F. W. F. T. B. and Sir G. R. respectively, or which they can respectively come by without Suit in Law or in Equity. To have and to hold unto the said T. S. and C. A. their Executors, Administrators and Assigns from henceforth, for and during all the rest and residue of the said Term and Time of 61 Years in and by the said herein first recited Indenture of Lease granted yet to come and unexpired, under and subject nevertheless to the several and respective Trusts, Provifo's and Limitations thereof herein after limited, Specified and declared, and to and for no other intents or purposes whatsoever; That is to say, &c.

C A P. VIII.

Of buying in precedent Incumbrances. A Puisne Mortgagee buying in a precedent Incumbrance shall hold against a middle Mortgagee till both are satisfied. Where a Mortgagee buying in a precedent Security of the Lands in his Mortgage, and other Lands, shall hold all against a middle Mortgagee, of all those Lands till all due to him on both Securities be satisfied. Mortgagee buys a precedent Incumbrance, and pleads he ought not to discover the Estate till all be paid off, and good. Aliter adjudged in the Exchequer. Statute not to be used as to Lands not in the Mortgage.

Qu. As to the Purchase of an Incumbrance against notice of the second Mortgage. Diversity between Charges on the Land and Interest in the Land, as to Discovery. Conussee when to Account, according to the extended value at Law, and for Profits over and above the value in Equity.

Sir Ralph Bovey cont' Skipwith.

A Nno 1651. Sir Francis Drake made the Plaintiff a Security out of the Manor and Rectory of W. Anno 1656. Sir Fr. Drake made the Defendant a Security for Money out of the Rectory only (the Defendant having no notice then of the Plaintiff's Security, which was for Money also) afterwards the Defendant hearing of the Plaintiff's Security, buys in a Security precedent to the Plaintiff's, which one *Beddingfeild* had, both upon the Manor and Rectory.

A Puisne Mortgagee buying in a precedent Incumbrance shall hold against a middle Mortgagee, till both are satisfied.

1. *Qu.* Whether the Plaintiff should be admitted to redeem *Beddingfeild's* Security without paying off what was due to *Skipwith*? And it was Ruled he should not.

2. *Qu.* In as much as the Defendant's Security was only out of the Rectory, and the Security he bought in from *Beddingfeild* was of both the Manor and Rectory, the Defendant should make use of *Beddingfeild's* Security as to the Manor, after that by the Profits of the Manor and Rectory *Beddingfeild's* Debt was satisfied, and whether the Plaintiff should not then be admitted to enjoy the Manor, his Security being as well of the Manor as the Rectory, and the Defendant to hold only the Rectory till he was satisfied?

A Mortgagee buying in a precedent Security of Lands in his Mortgage and other Lands, shall hold all against a middle Mortgagee.

Wyld and *Twisden* were of Opinion, That after *Skipwith* had received what was due on *Beddingfeild's* Security, he should receive no more Profits of the Manor, but the Plaintiff to be Let in to receive them, and the Defendant only to make use of *Beddingfeild's* Security as to the Rectory, to protect his Security of the Rectory; but it was resolved and ruled, That the Defendant should hold both the Manor and Rectory against the Plaintiff, till all due to him on both the Securities was paid him.

Siddall granted a Rent Charge of 300 *l.* per Annum to *H.* the Plaintiff for 2000 *l.* and afterwards Mortgage the Premises for 1200 *l.* to *Calamy*. *Calamy* being dead, those that have his Interest buy in a precedent Judgment to the Grant of the Rent Charge; the Plaintiff exhibits his Bill to discover what Estates the Defendant claims, and chargeth that *Calamy* had notice of the Plaintiff's Rent

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Mortgagee
buys in a pre-
cedent Incum-
brance, and
pleads he ought
not to discover
the Estate till
all be paid off.

before the Mortgage. The Defendant pleads the Mortgage to *Calamy*, and that afterwards hearing of precedent Incumbrances, they bought in a Legal Title precedent to the Plaintiff's; and offer, if the Plaintiff will pay all due on the Mortgage, and on their new acquired Title, to assign all to him; but if he will not, they ought not to discover what Estate that is they have bought, nor ought their Title be drawn under Examination in Equity, and by way of answer denied, that to their knowledge or belief Mr. *Calamy* had any notice of the Rent Charge when he lent his Money, and the Plea was allowed good. *Ch. Cases* 149. *Higgen and Siddall*.

The like to this was *Mach and Lees Case*, 22 *Car. 2.* and the like Plea pleaded and allowed to be good, and the Estate protected by a Statute.

Statute not to
be used as to
Lands not in
Mortgage.

A Mortgagee may protect himself by getting in an old Incumbrance, though nothing be due upon it. But a Statute bought in by a Mortgagee ought not to be used to Lands not in his Mortgage, the Statute being but an Incumbrance and no Estate.

In *Primate and Jackson's Case*, *Grove and Grove's Case*, and Mr. *Calamy's Case*, it was resolved in *Chancery*, That a Purchaser or Mortgagee coming in upon a valuable Consideration without notice, and purchasing in a precedent Incumbrance, it shall protect his Estate against any Person that hath a Mortgage subsequent to the first, though before the last Mortgage; and though he purchased the Incumbrance after he had notice of the second Mortgage.

In *Hacket and Wakefeild's Case*, in *Scaccario*, *Hards* 172. the Plaintiff was a Purchaser
for

for a valuable Consideration of 60*l.* *per An-*
num for Lives, and the Defendant afterwards
 took the Lands so charged in Mortgage, and
 being informed that the Plaintiff was before
 him in time, he took Assignments of three
 Recognisances prior to the Plaintiff's Title,
 two of which were for Money, and the
 third for Counter-security, upon which he
 extended all the Lands charged; and now
 the Plaintiff seeks by his Bill a discovery of
 the Nature of those dormant Incumbrances,
 and for what cause contracted, and what was
 actually received and paid upon them, or by
 perception of Profits since the Extent. To
 which the Defendant pleaded his Mortgage,
 and subsequent to that his Purchase of the
 other Incumbrances to corroborate his Secu-
 rity, and that therefore he ought not to
 make any Discovery. But the Court over-
 ruled his Plea, and ordered him to Answer,
 and that the Matter of the Plea should be
 saved to him at the Hearing. Though it
 was otherwise ruled in *Chancery*; and Baron
 Turner said, If the prior Incumbrance that
 was taken in had been a Fee-simple upon a
 Forfeited Mortgage, that then the second
 Mortgagee or Purchaser should not have a
 Discovery, because then the whole Estate
 was absolutely in the first, and consequently
 the second would have no Interest in it; but
 here the first Incumbrances were only Char-
 ges upon the Land, the Conusees having no
 Interest in it. This was in the *Exchequer*,
 12 *Can.* 2.

Diversity be-
 tween Charges
 on the Land,
 and Interest in
 the Land, as to
 Discovery.

Trin.

Trin. 22 Car. 2.

The Case in *Chancery* was, *E.* being seised of the Manor of *W.* and of the Manor of *M.* in —47 Mortgageth part of the Manor to *Burrell* for 1000*l.* Afterwards in —55 he acknowledgeth a Statute to *Burrell* of 800*l.* for Payment of 400*l.* Afterwards in —62 *E.* Mortgageth both these Manors to Mr. *Duppa* for 7000*l.* Afterwards in —65, *E.* Mortgageth the Manor of *W.* to *Lee* for 2000*l.* *Lee* having no notice of the said former Mortgages, but after *Lee* coming to have notice of the said Mortgage to Mr. *Duppa*, doth Purchase in the two prior Incumbrances made to *Burrell*, (*viz.*) the Mortgage of part of the Manor of *W.* and the Statute: The Executor of *Duppa* sues *Lee* in *Chancery*, and *Lee* pleads the whole matter. And *per Cur'*, *Lee* may make use of these Incumbrances to protect his own Mortgage, and he shall hold the Estate against *Duppa*, until he be satisfied for both the Money which he paid *Burrell*, and also his own Money lent upon the Mortgage. And *Duppa's* Executor shall not bring *Lee* to any Account upon this Statute in Equity, any otherwise than he may do at Common Law. Now at Common Law the Conusor must bring a *Scire facias ad computand'*, but then the Conusfee shall not Account according to the true Value, but according to the extended Value. But if the Conusor will sue in a Court of Equity, then he shall bring him to Account for what he hath received of the Profits above the extended Value: But in this Case *Duppa* shall not bring him to Account for what he hath received

Conusfee when
to Account ac-
cording to the
extended Value
at Law, and for
Profits over
and above the
Value in Equi-
ty

received above the extended Value, unless he hath received enough to satisfy both his Securities. And the Court held the first Mortgage (being but part) shall not extend to protect more than the part of the Manor first Mortgaged to *Burrell*. 2 *Ventr.* 337.

Stroud and Dickinson in Chancery, 28 Car. 2.

Note, The Defendant having an Obligation from J. S. to secure his Debt, Purchased in one Judgment precedent to his own Debt, and another subsequent, yet in time before the Judgment had by the Plaintiff from the same J. S. thereby hoping to have his own Debt that was mesne satisfied, but the Plaintiff having extended, and being evict by Tryal on the first Judgment, prayed the Defendant might Account and take Payment thereof, that so he might be let in; which *Finch*, Chancellor, decreed, albeit the second Judgment was precedent to the Plaintiff, being never extended, but Purchased for small Value to save the Debt by Obligation, which was said to be contrary to the accustomed Practice of the Court. 3 *Keb.* 754.

Smartle and Williams.

Ejectment of Lands in *Cornwal*, At a Tryal Assignments.
at Bar, it appeared on Evidence, That J. K. Seised in Fee, Mortgaged it to *Pennorrice* in 1659 for 500 Years, which Deed was acknowledged and enrolled in 1667, in it was the ordinary Covenant that the Mortgagor shall retain Possession until default of Payment;

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ment, the Mortgagee being out of Possession assigns the term to *Bluck*, the Executors of *Bluck* assign the term to *T. K.* who was the *Cestuy que Trust*; *T. K.* brought an Ejectment to recover Possession, and hanging this assigns the term to *Sir Ch. Muddisford*. *Sir Ch. Muddisford* makes a Mortgage of it for a 100 Years to *H. Coventry*, without taking notice of the first Mortgage by way of recital, but demised this to him by way of original Mortgage, as if he had been owner of the Land, and after this the first Mortgage Money is paid to *Sir Charles* by the Mortgagor, and he assigns the original Mortgage to him, and he for valuable consideration, conveys the Inheritance to the Defendant *Williams*, and delivers to him the original Deed of Mortgage, so the Plaintiff who claims as Executor to *Coventry* had it not to produce, but he produceth a Copy of the Inrolment of it to make his Title. Divers things were objected for the Defendant: 1. That the Copy is not Evidence. *Sed Cur. contra*: 2. The consideration of the first Mortgage is not proved, and the consideration paid by *Williams* upon the Purchase is void, and so the first Mortgage voluntary and void against him; but the consideration paid by *Sir Charles Muddisford* being proved upon the Assignment made to him, the Court held this sufficient to maintain the first Deed of Mortgage, for this was a Deed, and the consideration paid by *Muddisford* upon the Assignment to him before the Purchase of the Defendant, made this a Deed upon valuable consideration, although it was not so at first. *Quer.* saith the Reporter, for the contrary hath been held; But in *Progers* and *Higbam's Case*, P. 15.

Lease for 500 Years voluntary at first made good upon Money paid afterwards upon Assignment of it, before Purchase of the Inheritance.

Car. 2. B. R. It was held as here. 3. It was objected, That all the Assignments beside the first being made off the Land, and this by the Mortgagee without the joyning of the Mortgagor, were void; the Parties being out of Possession at the time of the Assignments, It was urged, that the first Assignment by the Mortgagor only was good. The Mortgagor by the Covenant to retain Possession unto default of payment, this makes the Mortgagor Tenant at will to the Mortgagee; but when the Mortgagee had made the first Assignment, by this the Tenancy at will determined, and the Mortgagor by retainer of the Possession afterwards was a Disseisor, and so all the Assignments by the Mortgagees being out of Possession without the concurrence of the Mortgagor are void, and the rather in this case, because *Muddiford* had brought an Ejectment before his Assignment, and by this had admitted himself out of Possession before, and at the time he made the Assignment or Lease to *Coventry*. But *Cur.* held all the Assignments good; for although the Tenancy at will was determined, the Mortgagor was yet Tenant at sufferance, and not of necessity a Dissee, and the bringing of the Ejectment is not but an admittance that he was in actual Possession, but not of an actual Disseisin, and so the Jury found *pro Quer.* Lessee of the Executors of *Coventree*, Assignee of the Lessee of *Muddiford*. 3 Leon.³⁸⁷. *Smartle and William's Case.*

Mortgagee for Years out of actual Possession, Assigns it, yet good.

C A P. IX.

Of Assignment of Mortgages. Leases for 500 Years, voluntary at first, made good upon Money paid afterwards upon the Assignment of it, before the Purchase of the Inheritance. Mortgagee for Years out of actual Possession assigns it, yet good. Where an old Mortgage ought to be taken as a new Mortgage. Where Money is paid by the Assignee to the Mortgagee, shall be principal as to the Assignee. Where the Money shall be intended to be paid at the day. Account before Assignment and after. Assignee at the third Hand to Account. Presidents of a Mortgage by way of Covenant. The Money to be paid within six Months Notice at any time within two Years. Lands Mortgaged for 500 Years, and assigned to Trustees in Trust for the Mortgagee, and further Sums borrowed, and secured by transferring the Assignment. Indenture of Assignment and a Proviso; Then a Release of the Proviso, and Equity. And then another Assignment, with another Proviso and Release of Equity; and at last the whole bargained and assigned on a new Proviso. Covenant on payment of Money such a day then to assure Lands, but not to be taken as a Mortgage, but an absolute Sale if the Money be paid at the Day. Assignment of a Mortgage for Years which was forfeited, whereto the Mortgagor is made a Party, and confirms the Assignment and Estate, with a further Proviso of Redemption by the Assignor. Conveyance by way of Mortgage, to be void on the Mortgagors discharging such Debts as the Mortgagee is Surety for him. Mortgage Security for Money Lent or to be Lent.

X wth Interest upon
Interest.

Lent. A Grant of Lands by Letters Patents for 60 Years assigned in Trust to pay Debts, the Trustees in consideration of Marriage, and 6000l. Portion which the Heir secures by Assignment; a Joynture to be made within three Years. A Grant of Lands for 500 Years, for securing an Annuity during the Mortgagees Life, or an Entire Sum. Two Grants of Fee-farm Rents and Tithes, and the same mortgaged. Assignment and Mortgage of Building, Leases and Plots of Ground in London.

ONE of the first Cases of Assignment of Mortgages as I find is in 3 Leon. 78. *Stamp's Case*, and argued there to be a kind of Maintenance. The Case was, J. S. being posselt of a term for Years granted the same to T. S. his Brother, 12 May, 20 Eliz. and afterwards 8 Oct. 21 Eliz. he himself being in Possession of it mortgaged the same to one P. who suffered him to continue his Possession. T. S. granted his Estate to J. S. who Mortgaged the same to one G. who suffered the said J. S. to continue in Possession until 10 Dec. 22 Eliz. G. entered, J. S. came to the said P. and requested him, that he would grant all his Estate to B. and C. to whom the said J. S. was indebted for security of their Money to whom the said P. said, That if he would find him any other Security for his Debt he would be content so to do, and J. S. offered to the said P. the said B. and C. and he accepted the same; and at the request of the said J. S. granted his Interest to them. 2 Febr. 22 Eliz. P. having notice of the Grant before made to the said E. upon which E. informed against P. upon Stat. 32 H. 8. Per Cur. P. is not within the penalty of

of the Statute ; for P. granted his Interest to B. and C. at the report of the said J. S. who was the Mortgagor for assurance of his Debt which he owed to them, and therefore it shall not be intended that, that Grant was made for any Maintenance: And also J. S. was in Possession a whole Year before the Grant.

Where an old Mortgage ought to be taken as a new Mortgage.

An old Mortgage assigned to another ought to be taken as a new Mortgage from the time of the Assignment, because an Account was stated with the Assignor and he paid off. *Cases 118.*

Money paid by Assignee to Mortgagee shall be principal to the Assignee.

All Money really due and paid by the Assignee to the Mortgagee, shall be principal to the Assignee: But the Account between the Mortgagee and Assignee not to conclude the Mortgagor. *Cb. Cases 68.*

In Evidence to a Jury at Bar it was agreed in Ejectment. *Per Curiam*, That against a Mortgagee subsequent, as the Plaintiff was, there can be no averment that the Money was not paid at the day according to a former Mortgage, but that the Estate was forfeited contrary to his own Deed of Assignment; or were it but an Indorsment of the Receipt of the Money; for else the Assignee of the first Mortgagee intermediate would be cheated, which the Assignee of the first Mortgagee cannot be: But it appearing that the Defendant had taken an Assignment under the first Mortgagor after the day, as if the Money were paid; the Court directed that it must be intended the Money was paid at the day, and so the Mortgagor subsequent to one made to the Defendant is good: And Verdict *pro Quer.* 2 *Keb.* 486.

Where the Money shall be intended to be paid at the day.

The Law of Mortgages.

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In *Venable's Case*, The Mortgagee was ordered to account before the Assignment, and after it. Account before Assignment and after.

A Mortgagee after forfeiture Assigns, and is Decreed to account for the whole time, without the Assignee's being made a Party. *Ch. Cases 3.*

A Bill was brought, 20 Car. 2. to redeem a Mortgage made in 1632. It was insisted by the Defendant that he came in as Assignee at the third Hand, and it would be hard to put him to Account now. And by the Lord Keeper (because no time was stinted for the redemption of a Mortgage) the Defendant shall Account; but in regard he comes in at an old Hand, shall not account but so far only as goes in discount of his Money, but not for the Surplusage. *Ch. Cases 102. Pearson and Pull's Case.*

for years wth Redemption
Mortgage by way of Covenant, the Money to be paid within six Months after notice at any time within two Years, wth Interest upon Interest.

THIS Indenture made the, &c. between A. B. of, &c. C. D. of, &c. E. F. of, &c. G. H. of, &c. of the one part, and J. P. of, &c. of the other part witnesseth: That the said A. B. C. D. E. F. G. H. for and in consideration of the Sum of 1500 l. of lawful Money of England to the said A. B. in hand paid by the said J. P. at or before the Sealing and Delivery of this present Indenture, the Receipt whereof the said A. B. doth by these Presents acknowledge, and thereof, and of every part and parcel thereof, doth clearly and absolutely acquit and discharge

The Law of Mortgages.

Demise, Bar-
gain and Sale
for 200 Years.

Covenant to
pay the Money
and Interest.

discharge the said J. P. his Executors and Administrators for ever by these Presents. And also for, and in consideration of the Sum of $\text{£} 5$. of like lawful Money to the said C. D. E. F. G. H. in hand paid by the said J. P. at or before the Sealing and Delivery of this present Indenture, the Receipt whereof they do hereby acknowledge, have demised, granted, bargained and sold, and by these Presents do Demise, Grant, Bargain and Sell unto the said J. P. his Executors, Administrators and Assigns all that capital Messuage or Manor House of B. in C. &c. and the Reversion and Reversions, Remainder and Remainders of all and singular the Premises with their Appurtenances, and of every part and parcel thereof, and all Rents and Profits thereunto incident and belonging. To have and to hold the said capital Messuage or Manor House, &c. and all and singular other the Premises, whatsoever hereby demised or mentioned to be demised, with their and every of their Appurtenances unto the said J. P. his Executors, Administrators and Assigns, from the day next before the day of the date hereof, for and during, and unto the full end and term of 2000 Years from thence next ensuing, and fully to be compleat and ended, Yielding and paying one *Pepper-Corn*, &c. And the said A. B. for himself, his Heirs, Executors, Administrators and Assigns, doth Covenant, Promise and Grant, to and with the said J. P. his Executors, Administrators and Assigns by these Presents, that he the said A. B. his Heirs, Executors, Administrators or Assigns, or some or one of them shall and will without any Defalcation, Deduction or Abatement

ment of any thing for any Tithes, Taxes, Charges or Payments whatsoever ordinary or extraordinary, well and truly pay, or cause to be paid to the said J. P. his Executors, Administrators or Assigns, at such times and place, and in such manner and form as is herein afterwards expressed the full Sum of 1500 l. of, &c. in Gold or Silver, and also Interest or Consideration for the forbearance thereof, after the Rate of 6 l. for every 100 l. by the Year, for all the time from the day of the date of this present Indenture, until the said 1500 l. shall be so paid (that is to say) If the said J. P. his Executors, Administrators or Assigns, or any of them shall on any day, &c. of Nov. or, &c. day of May, between the, &c. day of May, which shall be in the Year of our Lord God, 1660. and the, &c. day of May, which will be in the Year of our Lord, 1662. give or leave Notice in writing, at or in the said now Mansion House of the said A. B. called by the name of, &c. unto or for the said A. B. his Heirs, Executors, Administrators or Assigns, of payment to be made of the said 1500 l. at the end of six Months then next, after the giving or leaving such Notice, or to that effect: Or if the said A. B. his Heirs, Executors, Administrators or Assigns, or any of them shall on any, &c. day of Nov. or, &c. day of May, between the said day of, &c. which will be in the Year of our Lord 1660. and the said, &c. day of May, which will be in the said Year of our Lord, 1662. give or leave Notice in writing at, or in the now dwelling House of the said J. P. in, &c. unto or for the said J. P. his Executors, Administrators or Assigns, for payment to be

And Interest
till Repayment.

Notice of pay-
ment at any
time within six
Months.

The Law of Mortgages.

made of the said 1500 *l.* at the end of six Months, then next after the giving or leaving such Notice, or to that effect: Then in either of those Cases, whensoever any such Notice shall be so given or left as aforesaid, by either or any of the said Parties, the said Sum of 1500 *l.* shall be paid unto the said J. P. his Heirs, Executors, Administrators or Assigns, at or in the said now dwelling House of the said J. P. in, &c. as aforesaid, on the, &c. day of *May*, or, &c. day of *Nov.* which will be at the end of six Months, next after such Notice shall be given or left, as aforesaid: But if no such Notice for the payment of the said 1500 *l.* shall be by either, or any of the said Parties so given or left, as aforesaid, before the said——day of *May*, which will be in said Year of our Lord, 1662. then the said Sum of 1500 *l.* shall be paid unto the said J. P. his Executors, Administrators or Assigns, at or in the said now dwelling House of the said J. P. upon the said——day of *May*, which will be in the said Year of our Lord, 1662. without any further delay.

Interest to be
paid by half
yearly pay-
ments.

And the said Interest or Consideration for the forbearance of the said Sum of 1500 *l.* after the Rate aforesaid, shall from time to time, be well and truly paid at the said dwelling House of the said J. P. by equal half yearly payments of 45 *l.* upon every——day of *Nov.* and——day of *May* in every Year, until such time as the said 1500 *l.* shall be paid according as it is herein before covenanted to be paid; and at what time soever the said 1500 *l.* shall happen to be paid, all the Interest shall be paid for forbearance thereof, after the Rate aforesaid proportionably for all the time, from the time of the

then last half yearly payment before, until the day of payment of the said 1500 l.

And the said J. P. for himself, his Executors, Administrators and Assigns, and for every of them doth Covenant, Promise and Agree, to and with the said A. B. his Heirs and Assigns by these Presents, That until some default shall be made of, or in payment of the said Money herein before covenanted to be paid, or of some part thereof, he the said J. P. his Heirs, Executors, Administrators and Assigns, shall and will permit and suffer the said A. B. C. D. E. F. G. H. and every of them, their and every of their respective Heirs, Executors, Administrators and Assigns, according to their respective Estates and Interests in the Premises, before the Sealing of these Presents, peaceably and quietly to hold and enjoy all and singular the said Manor-House, &c. and Premises whatsoever, with their and every of their Appurtenances, and to receive, take and enjoy all the Rents and Profits thereof, to their and every of their own use and uses, without the Lett, Suit, Trouble, Interruption, Eviction or Ejection of the said J. P. his Executors, Administrators or Assigns, and without any account to be given unto the said J. P. his Executors, Administrators or Assigns for the same. Provided always, and it is hereby conditioned, granted, covenanted, concluded and agreed, by and between the said Parties to these Presents, for them their Heirs, Executors and Assigns, that if the said A. B. his Heirs, Executors, Administrators or Assigns, or any of them shall well and truly pay or cause to be paid unto the said J. P. his Executors, Administrators and Proviso

The Law of Mortgages.

Assigns, the said Sum of 1500 l. and all such Interest or Consideration for forbearance thereof, as aforesaid, in such sort, manner and form as the same is herein before covenanted to be paid; That then from and immediately after such payment made this present Indenture, and all and every the Term and Estate hereby made and granted, or mentioned to be made or granted shall cease, determine, become and be void, frustrate and of non effect to all intents and purposes: With usual Covenants.

v. d. v. 38. 41.

Presidents of Assignments. Lands mortgaged for the Term of 500 Years, and by Assignment (indorsed) assigned to Trustees in trust for the Mortgagee; and further Sums borrowed and secured by Assignment thereof.

Recital of a
Demise, Bar-
gain and Sale
for 500 Years.

THIS Indenture made, &c. between A. B. of, &c. of the first part, C. D. of, &c. of the second part, E. F. of, &c. of the third part, and G. H. of, &c. and J. K. of, &c. of the fourth part: Whereas C. S. of, &c. Esq; by Indenture of Lease bearing date, &c. — made or mentioned to be made between the said C. S. of the one part, and the said A. B. of the other part, for the consideration of the Sum of 1000 l. of, &c. therein mentioned to be paid by the said C. S. by the said A. B. did Grant, Bargain and Sell unto the said A. B. all that Manor, &c. To hold the same until the said Indenture of Lease, for and during, and until the full end and term of 500 Years, paying yearly one Pepper-corn if demanded, with and under a Proviso of being void upon the said C. S.

C. S.'s payment of 1045 *l.* upon the days, and at the place in the said Indenture mentioned, as by the said Indenture of Lease, Relation being thereunto had more at large may appear, which said term of Years was by Assignment bearing date on or about the day of, &c. was transferred unto O. O. P. Q. and R. S. their Executors, Administrators and Assigns, in trust for the said A. B. and was afterwards by Indenture *Quadrupartite*, bearing date on or about the 7th of July, Instant, made or mentioned to be made between the said O. O. P. Q. and R. S. of the first part, the said A. B. of the second part, Sir W. R. Kt. and T. O. of the third part, and the said E. F. of the fourth part, transferred and assigned by the said O. O. P. Q. and R. S. by the consent and direction of the said A. B. unto the said Sir W. R. and T. O. in trust for the said E. F. and to prevent the drowning of the said Term, and to the intent that the same may be kept on foot for the benefit of the said Termors, as by the Assignments may appear: And whereas by Indenture *Tripartite* bearing date the, &c. made or mentioned to be made between the said C. S. of the first part, the said O. O. of the second part, and the said A. B. of the third part, the said C. S. for the consideration of 400 *l.* of, &c. to him paid by the said C. D. did promise and agree that the Sum of 404 *l.* mentioned in the Condition of a certain Obligation, bearing even date with the said last recited Indenture, wherein the said C. S. is bound to the said C. D. and all Interest for the same, that should at any time or times then after be lawfully due, should stand secured unto the said C. D. his Executors,

Money on Bond
secured by the
Equity of Re-
demption.

A further Sum
borrowed to
stand secured
by the said
Mortgage.

cutors, Administrators and Assigns, by the Equity of Redemption of the said recited Mortgage as by the said Indenture appeareth, which said Indenture and Bond, and the 400 l. and Interest thereby secured is since assigned to the said A. B. as by the said Assignment appeareth. And whereas the said C. S. did afterwards borrow and receive of the said A. B. the further Sum of 100 l. for which he became bound to the said A. B. by his Obligation of 200 l. bearing date, &c. conditioned for the payment of the said 100 l. and Interest unto the said A. B. his Executors and Administrators, upon the day of then next following, and by his Writing under his Hand and Seal, bearing even date with the said Obligation, did agree that the said Sum of 100 l. and Interest should stand secured by the said Mortgage: And whereas the said C. S. did afterwards borrow and receive of the said A. B. the further Sum of 800 l. for which he became bound unto the said A. B. by his Obligation of 1600 l. bearing date the, &c. conditioned for the payment of 800 l. and Interest, unto the said A. B. his Executors, Administrators or Assigns, upon the day then next ensuing as by the said Obligation appears: And whereas by Indenture *Tripartite*, bearing date on or about the day of, &c. made or mentioned to be made between the said C. S. of the first part, the said A. B. of the second part, and the said C. D. and X. Y. of, &c. of the third part: It was agreed, That as well the said several Sums of 1000 l. 100 l. and 800 l. owing to the said A. B. as aforesaid, in the whole amounting to 1500 l. and all Interest for the same, as also

also the said Sum of 400 *l.* to the said C. D. All the Sum
 and all Interest for the same should be fur- ^{secured by a}
 ther secured by a Fine to be levied by the ^{Fine.}
 said C. S. of the Premisses, and of a certain
 Park called, &c. and of all other Lands and
 Tenements of the said C. S. in the Count
 of, &c. It was by the said Indenture cove-
 nanted, that the said C. S. should before the
 end of *Trin.* Term then next ensuing, levy, &c.
 to the said C. D. and X. Y. and the Heirs
 of the said C. D., &c. which said Fine so to
 be levied should be and enure, and should
 be construed, deemed and taken to be, and
 enure, and the said C. D. and X. Y. and the
 Survivor of them, and his Heirs should from
 henceforth stand, and be seised of the said
 Manor and Premisses, and of the said Park
 and all other the Lands, Tenements and
 Hereditaments of the said C. S. in the said
 County of S. to the use and behoof of the
 said A. B. his Executors, &c. for the Term
 of 100 Years, without impeachment of
 Wast, to commence from the date of the
 first recited Indenture, the remainder to the
 said C. S. his Heirs and Assigns for ever; Pro-
 vided nevertheless, and the said A. B. did
 thereby Covenant, that if the said C. S. ^{Proviso.}
 his Heirs or Assigns, should pay or cause to
 be paid unto the said A. B. the said Sum of
 1957 *l.* and also the said Sum of 412 *l.* unto
 the said C. D. at the time and place in the said
 Indenture mentioned, that then the said A. B.
 C. D. and X. Y. should reconvey the said Ma-
 nor and Premisses, and the said Park unto
 the said C. S. and his Heirs, as by the said
 Indenture amongst other Covenants more
 at large appeareth: And where as the said
 C. S. did levy a Fine accordingly, but did
 not

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Recognizance
assigned.

Assignment of
the whole;

not pay the said 1900 l. and 400 l. principal Money, or any part thereof according to the said Proviso in the said last recited Indenture, whereby the Estate of the said A. B. in the said Premises became absolute. And whereas the said C. S. together with Sir M. B. Kt. entred into and acknowledged a Recognizance, bearing date, &c. unto J. C. Gent. in the penalty of 400 l. conditioned for the payment of 200 l. which was since assigned unto M. J. Esq; and the said C. D. in trust for the said A. B. And whereas there is now justly due to the said A. B. the Sum of 2300 l. principal Money, and 86 l. 5 s. for Interest of the same, which amounts in the whole to the Sum of 2386 l. 5 s. Now this Indenture witnesseth, That for, and in Consideration of the said Sum of 2386 l. 5 s. of, &c. to the said A. B. and 5 s. of like Money to the said C. D. by the said E. F. in Hand paid, at and before the Sealing and Delivery of these Presents, the Receipt of which said several Sums, they the said A. B. and C. D. do hereby respectively acknowledge, and thereof, &c. they the said A. B. and C. D. have, and each of them hath bargained, sold, assigned and set over, and by these Presents do Bargain, Sell, Assign and set over unto the said E. F. her Executors, Administrators and Assigns, all that Manor, &c. and all and singular the Lands and Premises in the said first recited Indenture of Mortgage mentioned; And also all the Park called, &c. and all other the Lands, Tenements and Hereditaments of the said C. S. in the said County of S. and the Reversion and Reversions, Remainder and Remainders, and all other their Right Title,

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Title and Interest, Claim and Demand whatsoever, of in, and to all and singular the said Premises and every part thereof: To have and to hold the same unto the said E. F. her Executors, Administrators and Assigns, from the date of these Presents, for and during all the rest, residue and remainder of the said term of 1000 Years, granted by the said recited Indenture of the 22 of *May*, 1675. which are yet to come and unexpired, without impeachment of Waste.

And the said A. B. and C. D. M. J. and C. D. do hereby assign over unto the said E. F. the said recited Recognizance, Bonds or Obligations, and all and every the Covenants contained in the aforesaid Indenture of Lease or Mortgages, and all the benefit of the same, with full liberty to put the same in Suit in their Names, as they shall be advised for the more speedy and better recovery of the said Moneys. And the said A. B. for himself, &c. doth Covenant, Promise and Grant, to and with the said E. F. her, &c. that the said Sum of 2386 l. 5 s. is justly due and owing unto him by the said C. S. and that he the said A. B. hath not made any former or other Grant, Bargain, Sale or Assignment of the said Manor and Premises, or any part thereof, nor done, or wittingly or willingly suffered any act, or thing whatsoever, whereby the same Premises, or any part or parcel thereof, are or may be any way impeached, charged or incumbered in Title, Charge, Estate, or otherwise, except the aforesaid Assignment made to the aforesaid O. O. P. Q. and R. S. of the said Manor of before mentioned, and his and their Assignment thereof to the said Sir W. R.

And of the Bonds and Recognizances.

Free form Incumbrances.

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W. R. and T. O. in trust for the said E. F. And the said C. D. for himself, &c. doth Covenant and Grant to and with the said E. F. &c. That he the said C. D. hath not made any former or other Grant, Bargain, Sale or Assignment of the said Manors and Premises or any part thereof, nor done nor wittingly or willingly suffered any Act or Thing whatsoever, whereby the same Premises, or any part or parcel thereof, or may be any way impeached, charged or incumbered in Title, Estate, or otherwise, except the before recited Assignment of the said Debt of 400*l.* and Interest, and the said recited Bond and Indenture, whereby the same is secured and made to the said A. B. as herein before is set forth. *In witness, &c.*

*Mortgage of the Lease of a Parsonage, Glebe, Tithe, &c. for securing 450*l.* and Interest, and also an Annuity of 50*l.* per Annum during the Life of one of the Mortgagees, with Covenant to renew the Lease in the Name of the Mortgagees, or the Survivor of them, within Seven Years, if the Annuity Man be then living, or any part of the Money unpaid; the new Lease to be charged with Fine and Expenses of renewing.*

THIS Indenture Tripartite made, &c. between A. B. of, &c. of the First Part; C. D. of, &c. of the Second Part; and E. F. of, &c. of the Third Part. Whereas the Dean and Chapter of St. Paul's by their Indenture of Lease under their Common Seal, bearing Date, &c. did Grant, Demise, and to Farm Let unto the said A. B. all that the Parsonage of, &c. To have and to hold
unto

unto the said A. B. his Executors, Administrators and Assigns from, &c. unto the full End and Term of 31 Years from thence next ensuing and fully to be compleat and ended, at and under the yearly Rent of 22 *l.* 10 *s.* and Corn payable by such Quantity, and Rate, and Time as therein are mentioned, as in and by the said recited Indenture of Lease, relation being thereunto had it may may more at large appear. Now this Indenture witnesseth, That the said A. B. for and in performance on his part of certain Articles, in an Agreement Tripartite indented, bearing Date, &c. made between the said C. D. of the First Part, the said A. B. of the Second Part, and the said E. F. of the Third Part, and for the securing the Sum of 450 *l.* of lawful Money of *England*, and the Interest thereof in such manner as is herein after mentioned. And also for the securing of one Annuity or Yearly Sum of 60 *l.* unto him the said C. D. during the Term of his natural Life, Hath Granted, Bargained, Sold, Assigned and Set over, and by these Presents doth Grant, Bargain, Sell, Assign and Set over unto the said C. D. and E. F. as well the said recited Indenture of Lease, and the said Parsonage of, &c. and Appurtenances whatsoever by the said Indenture of Lease demised; As also all the Estate, Right, Title, Interest, Use, Trust, Profit, Property, Reversion, Tenant-right, Claim and Demand whatsoever of him the said A. B. his Executors and Administrators, of, in and to the same, To have and to hold the said recited Indenture of Lease, Parsonage, Glebe Land, Tithes, &c. and all and singular other the Premises herein before granted, bargained, sold, assigned and set over,

over, or meant, mentioned, or intended to be herein and hereby granted, bargained, sold, assigned and set over, and every part and parcel thereof, with their and every of their Appurtenances unto the said C. D. and E. F. their Executors, Administrators and Assigns from henceforth, for and during all the residue and remainder of the said Term of 21 Years in and by said recited Indenture of Lease granted, which are now thereof to come and unexpired, and fully to be compleat and ended. Provided always, and these Presents are upon Condition nevertheless, That if the said A. B. his Executors, Administrators and Assigns do and shall well and truly pay, or cause to be paid unto the said C. D. and E. F. their Administrators and Assigns the full Sum of, &c. in manner and form following, &c. And also upon this further Consideration, That if the said A. B. his, &c. do and shall yearly and every year, during the Term of the natural Life of him the said D. S^x well and truly pay or cause to be paid unto the said C. D. or his Assigns at or in the, &c. one Annuity, Annual or Yearly Sum of 60 *l.* of lawful Money of *England*, at the four usual Feasts or Quarter Days in the Year (*viz.*) the, &c. by even and equal Portions, and that without any Deduction, Defalcation or Abatement whatsoever for or by reason of any Taxes, Rates, Assessments or Impositions now or hereafter to be laid, rated, assessed, taxed or imposed upon the said Annuity or Yearly Sum of 60 *l.* or upon him the said C. D. or his Assigns, in respect thereof, the first Quarterly Payment thereof to begin and to be made on, &c. that then and from thenceforth and at all times

x
C. D.

times afterwards this Indenture shall be void and of none effect to all intents and purposes, as if the same had never been made, and the said recited Indenture of Lease shall be re-delivered to him the said A. B. safe, whole and uncanceled; This Indenture or any thing contained to the contrary thereof in any wise notwithstanding. And the said A. B. for himself, his, &c. and for every of them doth Covenant and Grant to and with the said A. B. and C. D. and either of them, their and either of their, &c. by these Presents in manner and form following (that is to say) That he the said A. B. his, &c. shall and will well and truly pay or cause to be paid unto the said C. D. and E. F. their, &c. the said Sum of, &c. by the several Proportions (part thereof to the said C. D. and part thereof to the said E. F. as aforesaid) Sum and Sums of Money, and on the several Days and Times herein above limited and appointed for Payment thereof without any Deduction as aforesaid: And also shall and will well and truly pay or cause to be paid unto the said C. D. his, &c. the said Annuity or Yearly Sum of 60 l. yearly and every year during the natural Life of the said C. D. at the Place aforesaid, on the several Feasts and Quarter Days herein before limited or appointed for Payment thereof, and that without any Deduction, Defalcation or Abatement as aforesaid, according to the true intent and meaning of these Presents, and that from and after default shall be made of or in Payment of the said Sum of, &c. or any part thereof on the Days and Times herein before limited, or of or in the Payment of the said Annuity of 60 l. or any part thereof,

thereof, on any the Feasts or Quarter Days herein before limited, in any of the said Cases it shall and may be lawful to and for the said C. D. and E. F. or either of them unto whom default shall happen to be made of Payment of any the Sum or Sums of Money or Annuity herein beforementioned to be paid and payable, his and their Executors, Administrators and Assigns, into and upon the said Parsonages, &c. to enter, and the Rents, Yearly or other Profits, &c. without the Lett, &c. and that free and clear, &c. and of and from all other Estate, Titles, Troubles, Charges and Incumbrances whatsoever (the Rent and Covenants in the said recited Indenture of Lease contained, and which after the actual entry of them the said C. D. and E. F. or either of them, their or either of their, &c. shall on the Tenants or Lessees part and behalf grow due to be paid, done and performed, only excepted and foreprized) then from and after default of such Payment as aforesaid (a Covenant for further Assurance) to them or the Survivor of them, &c. And moreover the said A. B. for himself, his, &c. and for every of them, doth by these Presents covenant, grant and agree to and with the said C. D. and E. F. and either of them, their and either of their, &c. that he the said A. B. his, &c. shall and will within the time and space of seven Years from the Feast day of, &c. last past before the Date of these Presents or sooner, at his or their own proper Costs and Charges take a new Lease, or renew the Term, Estate and Interest of and in the said Parsonage, Glebe Lands, Tythes and Premises for the full term of Twenty

one

one Years from the Date of such new Lease, at and under the same Rents and Covenants as are by the said recited Indenture of Lease now reserved and contained in the Name or Names of them the said C. D. and E. F. or the Survivor of them, or the Executors or Administrators of such Survivor, in case the said C. D. shall be then living, or any of the said Sum or Sums of Money herein before mentioned shall then remain unpaid, in Trust, first for securing the Payment of so much and such of the said several Sum and Sums of Money with Interest for the same, as then shall remain due and unpaid, and subject to the Payment of the said Annuity during the continuance thereof, and of all the Arrears thereof. And from and after Payment and Satisfaction of the said Sum and Sums of Money and Interest and Payment of the said Annuity during the continuance thereof, and of all the Arrears of the same in Trust for the said A. B. his Executors, Administrators and Assigns. And it is likewise hereby covenanted and agreed by and between all the said Parties to these Presents, That in case the said A. B. his, &c. or any of them shall at any time hereafter before the said several Sum and Sums of Money and Interest to be paid, and whilst the said Annuity continues, or any Arrears thereof remain unpaid, refuse or neglect to renew such Lease, Estate, Term or Interest in the said Premises within the time aforesaid, according to the true intent and meaning of these Presents, but shall suffer the said Seven Years to elapse, that then it shall and may be lawful to and for them the said C. D. and E. F. and the Survivor of them, or the Executors or Administrators

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strators of such Survivor from and after any such refusal or neglect to surrender up the present Lease, Estate and Interest in the said Premises, and to renew or take a new Lease thereof in his or their own Name or Names, and the said Lease and Premises shall be charged and chargeable with all such Fine and other Charges and Expences which they the said C. D. and E. F. or either of them, their or either of their, &c. shall or may sustain or be put unto, for, touching or concerning the renewing of such Lease, and shall not be redeemed or redeemable till the same with Interest or Damages for forbearance thereof be fully paid and satisfied: This Indenture or any thing herein contained to the contrary thereof in any wise notwithstanding. And further it is hereby declared and agreed by and between all the Parties to these Presents, That as often as the said Lease shall be renewed, the same shall, at all times immediately from and after the renewing thereof, be subject and liable to the Trusts, Intents and Purposes aforesaid, and to no other Use, Intent or Purpose whatsoever.

*Covenant for quiet Enjoyment till default of
Payments.*

Assignment

Assignment and Proviso, then a Release of the Proviso or Equity, and then another Assignment with another Proviso and a Release of Equity; and at last the whole Bargain assigned on a new Proviso, well drawn.

THIS Indenture Tripartite made, &c. between A. B. of, &c. of the First Part, C. D. of, &c. of the Second Part, and E. F. of, &c. of the Third Part. Whereas by Indenture bearing date, &c. made between the said C. D. and S. C. of, &c. of the other Part, for the Considerations therein mentioned the said C. D. did Demise, Grant, Bar- Demise, Bargain and Sell unto the said S. C. All that gain and Sale Farm, &c. To have and to hold the said Mes- recited. suage with the Appurtenances, and the said several Clofes, &c. thereby demised, with their and every of their Appurtenances unto the said C. D. his Executors, Administrators and Assigns from the day of the date of the said Indenture of Demise, for and during the Term of 500 Years from thenceforth next ensuing and fully to be compleat and ended, upon Condition nevertheless (and to recite the Proviso, &c.) which said Sum of, Proviso. &c. was not paid at the Time or Days limited in the said Proviso, nor at any time since, whereby the said term of 500 Years granted Forfeited. as aforesaid to the said S. C. became absolute in Law. And whereas by Indenture Tri- Assignment recited. partite bearing Date, &c. made between the said C. D. by the Name of, &c. of the First Part, the said S. C. of the Second Part, and the said A. B. of, &c. of the Third Part; the said S. C. in Consideration of the Sum of, &c.

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to him in hand paid by the said A. B. and of the further Sum of, &c. of like lawful Money by him in hand paid to the said C. D. the said S. C. did grant, bargain, sell, assign and set over unto the said A. B. (by the direction of the said C. D. testified by his being a Party to these Presents) all and singular the said Farm, &c. together with the said first recited Indenture, and all the Estate, Right, Title, Interest, and Term of Years then to come and unexpired, claim and demand whatsoever of him the said S. C. his Executors, Administrators and Assigns of, in and to the Premises; and also all such Deeds, Evidences and Writings concerning the said Premises or any part thereof, which he the said S. C. then had in his Custody or Power, or were in the Custody of a other Person or Persons in Trust for her. To have and to hold the same unto the said A. B. his Executors, Administrators and Assigns from the day next before the day of the date thereof, for and during all the rest, residue and remainder of and in the aforesaid Term of 500 Years then to come and unexpired. And the said C. D. for the Considerations aforesaid, did in and by the said recited Indenture Tripartite, Grant, Bargain, Sell, Release, Ratifie and Confirm unto the said A. B. his Executors, Administrators and Assigns, all the said Estate, Right, Title, Interest, Property, Condition, Power of Redemption, Claim and Demand of him the said C. D. either in Law or Equity, of, into, or out of the said Premises. To be had and holden unto the said A. B. his Executors, Administrators and Assigns, for and during all the rest and residue of the said Term of 500 Years

Release and confirmation of of the Equity of Redemption recited.

Years then to come and unexpired, upon Condition nevertheless, That if the said C. ^{Proviso.} D. his Executors, Administrators or Assigns should pay or cause to be paid unto the said A. B. his Executors, &c. the Sum of, &c. of lawful Money of *England*, at the Days and Times and in such manner and form as is herein mentioned, then the said A. B. his Executors, Administrators or Assigns, should Reconvey, Assign and Assure all and singular ^{To Reconvey.} the said Premises with their Appurtenances, and all his and their Right, Title and Interest therein and thereunto unto the said C. D. his Executors, Administrators or Assigns, or such other Person or Persons as he or they should nominate and appoint, freed and discharged, or otherwise saved harmless and kept indemnified of and from all manner of incumbrances had, made, committed, done, or suffered by him the said A. B. his Executors or Assigns, or any of them, as in and by the said last recited Indenture, &c. which said Sum of, &c. was not paid, whereby the remainder of the said Term of 500 ^{Forfeit.} Years granted as aforesaid unto the said A. B. become absolute in Law. Now this Indenture witnesseth, That the said A. B. for and in Consideration of the Sum of, &c. of lawful Money of *England*, to him in hand paid by the said E. F. by the special Direction and Appointment of the said C. D. testified by his being made a Party to these Presents, and his by Signing and Sealing of the same, and of the further Sum of, &c. of like lawful Money to the said C. D. in hand likewise paid by the said E. F. at or before the Sealing and Delivery of these Presents, the Receipts of which said several Sums of Mo-

ney they the said A. B. and C. D. do hereby respectively acknowledge, and thereof, and of every part and parcel thereof, do hereby for themselves respectively, and for their respective Heirs, Executors and Administrators Release, Acquit and Discharge the said E. F. his Executors, Administrators and Assigns, and every of them for ever by these Presents, he the said A. B. by the direction and appointment of the said C. D. testified as aforesaid, hath Granted, Bargained, Sold, Assigned and Set over, and by these Presents doth Grant, Bargain, Sell, Assign and Set over unto the said E. F. all that Farm, &c. and all the Estate, Right, Title, Interest, Term of Years, Property, Claim and Demand whatsoever of him the said A. B. of, in or to the said, &c. with their and every of their Appurtenances, and every or any part or parcel thereof, together with the said two recited Indentures. To have and to hold the said Farm, &c. with their and every of their Appurtenances, and every part and parcel thereof, unto the said E. F. his Executors, Administrators and Assigns from henceforth, for and during all the residue and remainder of the said term of 500 Years therein to come and unexpired. And the said C. D. for the Considerations aforesaid doth ratifie, approve and confirm unto the said E. F. the said Farm, &c. and all other the Premisses herein before mentioned with their and every of their Appurtenances; To have and to hold the said Farm, &c. with their and every of their Appurtenances unto the said E. F. his Executors, Administrators and Assigns from henceforth for and during so many Years of the said 500 Years as are yet

to come and unexpired, without Impeachment of or for any manner of Waste, and doth also for the Considerations aforesaid, Remise, Release, and for ever quit Claim unto the said E. F. all Conditions of Redemption, and all Right, Power and Equity of Redemption of the said Farm, &c. with the Appurtenances by vertue of any Indenture or Deed of Defeasance, or by vertue of any Covenant, Clause or Condition of Redemption in any Indenture, Deed or Writing contained or otherwise howsoever, wherein he hath Right and Power to release such Equity of Redemption. Provided always and upon Condition nevertheless, That if the said C. D. his Heirs, Executors, Administrators or Assigns, or some or one of them do and shall well and truly pay or cause to be paid unto the said E. F. his Executors, Administrators or Assigns the full and just Sum of, &c. of lawful Money of *England* at or in the, &c. in manner and form following; that is to say, Pounds part thereof at or upon the Day of next ensuing the Date of these Presents, and the Sum residue and in full Payment of the said Sum of at or upon the Day of which shall be in the Year of of our Lord God without making any Deduction, Defalcation or Abatement out of the same for any manner of Taxes, Impositions or Assessments whatsoever, that then and from thenceforth this present Indenture, and the Grant, Bargain and Sale hereby made shall cease, determine and be utterly void; Any thing herein contained to the contrary thereof in any wise notwithstanding, and that then also the said

Release of Equity of Redemption.

Proviso. quod C. D. part redemption &c.

Reassure.

E. F. his Executors, Administrators and Assigns shall Transfer and Assign unto the said C. D. his Heirs, Executors, Administrators or Assigns, or to such other Person or Persons as he or they shall nominate or appoint, all his Interest, Estate and Term of Years of and in the said Farm, &c. and Premises with their Appurtenances to him hereby granted as aforesaid. And the said C. D. for himself, his Heirs, Executors and Administrators doth covenant, promise and Grant to and with the said E. F. his Executors, Administrators and Assigns, and to and with every of them by these Presents, That he the said C. D. his Heirs, Executors or Administrators, some or one of them shall and will well and truly pay or cause to be paid unto the said E. F. his Executors, Administrators and Assigns the said Sum of at the Days, Times and Place before mentioned or appointed in the said Proviso for the Payment thereof in manner and form aforesaid, without making any Deduction, Defalcation or Abatement whatsoever.

Covenant to pay.

Enjoyment
freed of the
Equity of Redemption.

C. D. covenants that he and A. B. or one of them, have good Right, Power and Authority, &c.

And for quiet Enjoyment, free from Incumbrances after breach of the Proviso, and further Assurance discharged of the Proviso aforesaid, and of all Proviso's, Conditions and Agreements whatsoever for or concerning the Redemption of the Premises, or any part thereof, as by the Council, &c.

Nevertheless it is declared and agreed by and between the said Parties to these Presents, That in the mean time, and until breach

breach of the said Proviso, it shall and may be lawful, to and for the said C. D. his Executors, Administrators or Assigns, peaceably and quietly, to have, hold, occupy, possess and enjoy the said Farm, &c. with their and every of their Appurtenances, and to receive, and take the Rents, Issues and Profits thereof, to his and their own use and uses, without the lawful Let, Suit, Trouble, Interruption, Claim or Demand of the said E. F. his, &c. and the said A. B. for himself, his Heirs, Executors, Administrators and Assigns, doth Covenant, Promise and Grant, to and with the said E. F. his Executors, Administrators and Assigns, and to, and with every of them by these Presents, that for, and notwithstanding any Act, matter or thing by him the said A. B. had, made, committed, done or suffered to the contrary the said two recited Indentures, and the said Term of 500 Years thereby granted, and hereby assigned and confirmed unto him the said E. F. now are, remain and continue in full force and virtue, unforfeited, unsurrendered, or any ways made void or annihilated; and also that the said A. B. hath not made, committed, &c. whereby the said Premises may be impeached, charged, &c.

Covenant that
the recited In-
denture is good.

Covenant

Covenant on payment of Money on such a day then to assure Lands, not to be taken as a Mortgage, but as an absolute Sale if the Money be paid at the Day.

Recital

Covenant that the other paying so much Money shall have such an Estate assured to him.

THIS Indenture made, &c. between A. B. of, &c. of the one part, and the Right Honourable W. Lord P. of the other part: Whereas by one Indenture bearing date, the, &c. and by one other Indenture, bearing even date with these Presents, both of them made between the said W. Lord P. of the one part, and the said A. B. of the other part, the said Lord P. for the consideration of pounds of, &c. therein mentioned; Hath granted, bargained, sold and conveyed, or made mention to Grant, Bargain, Sell and Convey unto the said A. B. his Heirs and Assigns; All that Manor or Lordship of, &c. as in and by the said Indenture, Relation being thereunto had, it may more at large appear. Now this Indenture witnesseth, That it is covenanted, granted, concluded and agreed, by and between the said Parties to these Presents, and the said A. B. for himself, his Heirs, Executors, Administrators and Assigns doth Covenant Promise and Grant, to and with the said W. Lord P. his Heirs and Assigns by these Presents, that if the said Lord P. his Heirs, Executors, Administrators or Assigns, or any of them do, and shall well and truly pay, or cause to be paid unto the said A. B. his Executors or Administrators, the full Sum of pounds of, &c. upon the day of O. next ensuing the date of this present Indenture, in or at the Common Dining Hall of, &c. that then he the

the said A. B. his Heirs or Assigns, shall and will at any time within one Year, next after such payment made, as aforesaid, at and upon the reasonable request and proper Costs and Charges in the Law of the said W. Lord P. his Heirs or Assigns, well and sufficiently convey and assure unto the said W. Lord P. by such good and sufficient Conveyances and Assurances, as the said W. Lord P. his Heirs or Assigns, or his or their Council learned in the Law, shall be reasonably devised or advised, all and singular the said Manor of, &c. Hereditaments and Premises whatsoever, which in and by the said recited Indenture, or either of them are conveyed unto the said A. B. and his Heirs, as aforesaid, free and clear from all Incumbrances had, made or done, or to be had, made or done by the said A. B. his Heirs or Assigns. And yet nevertheless, it is hereby declared and fully agreed, by and between the said Parties to these Presents, for them and their Heirs, That the said Conveyances made by the said Lord P. to the said A. B. as aforesaid, or these Presents were not, nor are intended, nor shall be taken or construed to be in the nature of a Mortgage or Security for Money in any wise, or to give any equitable Right, Trust or Liberty of Redemption of the Premises unto the said Lord P. or his Heirs, neither shall the said A. B. his Heirs or Assigns, be any ways accomptable for the Profits of the said Manor, &c. and Premises unto the said W. Lord P. his Heirs or Assigns, in case he or they shall make payment of the said Sum of pounds at the day and place before mentioned, neither shall the said Lord P. his Heirs, Executors or Administrators

Yet not to be taken in the nature of a Mortgage, nor to give any Equity of redemption, and not to be accomptable for the Profits till Payment.

Nor shall the
Vendor be com-
pellable to pay
the said Mo-
ney.

He shall have
election to pay
it at that time,
but not at a-
nother time.

nistrators, be any way compellable in Law or Equity to pay the said Money, the same being left to his and their free choice, whether he or they will pay the same or not; And in case he or they shall not pay the same upon the said day of, &c. now next ensuing, then the said A. B. his Heirs, Executors or Administrators, shall not be compellable to accept the same, nor to make any Reconveyance at all of the said Manors, Lands and Premises; It being agreed between the said Parties, and hereby acknowledged by the said Lord P. that the said Sum of _____ pounds paid by the said A. B. is the full and true value of the said Manor and Lands, and not Money lent, but paid by the said A. B. for the absolute Purchase thereof; Only it is agreed, that the said Lord P. his Heirs or Assigns, shall have an election and power to have it again, if he or they shall pay the said Sum of _____ pounds at the place afore said, upon the said, &c. day of M. next ensuing the date hereof, but shall not have liberty to pay the same at any other time. And in case the said L. P. or his Heirs, Executors or Administrators, shall not pay the said Sum of, &c. at the day and place afore said, then he the said Lord P. for himself and his Heirs, hereby disclaim all Suits in Equity. Neither shall nor will he or they be relievable in any Court or Courts of Equity, or elsewhere concerning the Premises, nor seek to have again the said Manor or Lands, or account for the Profits thereof: But he the said Lord P. his Heirs and Assigns, upon the request and act, &c. of the said A. B. his Heirs and Assigns, after the said _____ day of _____ in case the said Sum of, &c. be not then

then paid, shall and will make such other, or further Release or other Conveyances for absolute releasing of his and their Right, Title and Interest in Law or Equity, of, in and to the said Premises unto the said A. B. his Heirs and Assigns, as by the said A. B. his Heirs or Assigns, or his, or their Council learned in the Law shall be reasonably required. And it is further agreed, by and between the said Parties to these Presents, that if the said Money be not paid upon the said, &c. day of, &c. next, That then this present Indenture under the Hand and Seal of the said L. P. shall be delivered up to the said A. B. his Heirs or Assigns to be cancelled.

Assignment of a Mortgage for Years which was forfeited, wherein the Mortgagor is made a Party, and confirms the Assignment and Estate, with a further Proviso of Redemption by the Assignor.

THIS Indenture Tripartite made the, &c. day of, &c. between A. B. of, &c. of the first part, C. D. of, &c. (Executors of the last Will and Testament of O. O. of, &c. deceased) on the second part, and E. F. of, &c. on the third part: Whereas the said A. B. by his Indenture bearing date the, &c. for the consideration therein mentioned, did Demise, Grant, Bargain and Sell unto the said O. O. All that, &c. all which said Lands and Premises are situate, lying and being within the Parish of, &c. in the County of, &c. and all and singular Ways, &c. whatsoever
to

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to the said Lands, or any part thereof in any wise belonging or appertaining, or accepted, reputed, taken or known as part, or parcel of the same, or of any part thereof; and the Reversion and Reversions, &c. To have and to hold the said Lands, &c. unto the said O. O. his Heirs, Executors, Administrators and Assigns, for and during the Term of 500 Years from thence next ensuing, without impeachment of, or for any manner of Waste, Yielding and paying therefore yearly one *Pepper-corn*, &c. In which Indenture there is a Proviso or Condition to this effect (that is to say) provided alway, and upon Condition, that if he the said A. B. his Heirs, Executors or Assigns, or any of them did or should well and truly pay, or cause to be paid unto the said O. O. his Executors, Administrators or Assigns, the full and just Sum of 510 *l.* of lawful Money of *England*, in manner and form as therein is expressed (that is to say) the Sum of 15 *l.* (part thereof) upon the first day of &c. next ensuing, after the date of the said Indenture, and the Sum of 515 *l.* (residue thereof) upon the, &c. both the said Payments to be made at or in, &c. without any defalcation or abatement to be made out of the said Sums, or either of them for Taxes, or for any other cause, matter or thing whatsoever, that then the said Indenture and the Estate thereby made should cease, determine and be utterly void, any thing therein contained to the contrary in any wise notwithstanding, as in and by the said Indenture, and the Proviso therein contained (relation being thereunto had)

more

at large may appear. And whereas default was made in payment of the said Sums of 530*l.* at the Days and Place in the said Proviso mentioned, so as the Estate and Term for 500 Years of and in the said parcels of Ground, &c. and Premises, became absolute unto the said O. O. And whereas also the said O. O. did afterwards make his last Will and Testament, and did constitute and appoint the said C. D. sole Executor thereof, and shortly after died. Now this Indenture witnesseth, That for and in consideration of the Sum of, &c. of lawful, &c. being the full Money, Principal and Interest now due upon the said Lease and Estate to the said C. D. and of 5*s.* of like lawful Money to the said A. B. well and truly in hand paid by the said E. F. before the Sealing and Delivery of these Presents, the Receipt of which said several Sums they do hereby respectively acknowledge, and thereof do acquit and discharge the said E. F. and for other good Considerations them thereunto moving, the said C. D. by and with the Direction and Appointment of the said A. B. testified by his being made a Party hereunto and his sealing and delivery thereof, Hath bargained, sold, aliened, assigned and set over, and by these Presents doth bargain, sell, alien, assign and set over unto the said E. F. all and singular the before-mentioned parcels of Land, &c. in and by the said recited Indenture intended to be demised and granted to the said O. O. deceased, his Executors and Administrators, and all the Estate, Right, Title, Interest, Term for Years, Claim and Demand whatsoever of him the said C. D. by force and
vertue

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vertue of the said recited Indenture, as Executor to the said O. O. or otherwise howsoever, together with the said Indenture, And the Reversion and Reversions, Remainder and Remainders of the said Premises, and all yearly and other Rents, and Profits reserved upon any Demise made of the said Premises or of any of them, To have and to hold the said parcels of Ground, &c. before mentioned and intended to be hereby assigned, with their and every of their Appurtenances, together with the said Indenture, unto the said E. F. his Executors and Administrators for and during all the residue and remainder of the said Term of Five hundred Years in and by the said recited Indenture mentioned to be granted yet to come and unexpired, in as full, ample, and beneficial manner, to all intents and purposes as he the said C. D. might have enjoyed the same by force and vertue of the said recited Indenture, as Executor to the said O. O. or otherwise. And the said C. D. for himself, his Heirs, Executors and Administrators doth covenant and grant to and with the said E. F. his Executors and Administrators by these Presents, That neither the said O. O. during his Life, nor the said C. D. since his Death or either of them respectively, did or hath at any time heretofore committed, suffered or done any act, matter or thing whatsoever whereby the said Premises or any of them are or may be impeached or incumbered in Title, Charge, Estate or otherwise howsoever. And the said A. B. for the Considerations aforesaid hath ratified and confirmed, and by these Presents doth ratifie and confirm unto the said E. F. all those

those the before mentioned and intended to be hereby assigned Lands, &c. and Premises, with their and every of their Appurtenances, To have and to hold the same unto the said E. F. his Executors, Administrators and Assigns during the residue of the said Term of 500 Years hereby assigned yet to come and unexpired, discharged of the said Proviso or Condition, and of all equitable Right and Interest from Redemption of the same in Law or Equity; Provided always, and it is the true, intent and meaning of these Presents, and the said E. F. for himself, his Executors and Administrators, doth covenant and grant to and with the said A. B. his Heirs and Assigns by these Presents, That if he the said A. B. his Heirs, Executors or Administrators, or any of them, shall well and truly pay or cause to be paid unto the said E. F. his Executors or Administrators the full and just Sum of 530^l. of lawful, &c. in manner following (that is to say) 15^l. part thereof on the day of which shall be in the Year of our Lord God and 515^l. residue thereof on the day of then next following, both the said Payments to be made in the common Dining-Hall of *Grays Inn* in the County of *Middlesex*, without any Defalcation for Taxes, or for any other Cause or Thing whatsoever, that then he the said E. F. his Executors and Administrators shall and will Assign, Transfer, and Set over unto the said A. B. his Heirs or Assigns, or to such Person or Persons as he or they shall nominate and appoint, all those the said parcels of Land, &c. and Premises before mentioned, and intended to be hereby assigned with their Appurtenances, and

Proviso.

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all his Estate, Right, Title and Interest in or to the same, discharged of all Incumbrances by him or by any Person or Persons claiming or to claim from, by or under him done or suffered in the mean time.

Covenant that the Assignor will pay the Money.

Covenant that the Lease is and shall be in force for quiet Enjoyment.

After default of Payment that the Assignee shall take the Profits.

Covenant for further Assurance after breach of the Proviso: Assignor to take the Profits till Breach.

The Vendee would Purchase the Estate, and be hopes to raise the Money speedily. Vendor covenants, That if the Vendee, or other Person by his Order, pay, &c. at two Payments. To convey the Land, and to hold the Premises till first Payment, provided upon default to yield up the Possession of the Premises.

THIS Indenture made, &c. between A. B. of, &c. of the one Part, and C. D. of the other Part, Witnesseth, That whereas the said A. B. is right Owner and Seised of the Manor or Lordship of L. with the Rights, Members and Appurtenances thereof in the County of O. formerly the Inheritance of E. D. deceased, Father of the said C. D. and that absolutely free and clear of and from all manner of Right, Title, Claim and Interest of the said C. D. and his Heirs, or any pretence thereto either in Law or Equity, being minded at this time to sell the

the same and to depart therewith, whereof the said C. D. taking notice, and having an earnest desire, as he pretendeth, that some of his Kindred, Friends, or near Acquaintance may have the refusal thereof; and having, as he likewise affirmeth, some hopes speedily to effect the same at the rate of 5000*l.* being the price set and pitched by the said A. B. for the Purchase thereof. Now to the intent and purpose that it may appear to such as the said C. D. shall notify the same to be a Reality and not a Fiction of his own, the said A. B. at the desire of the said C. D. doth for himself, his Heirs, Executors and Administrators, Covenant, Promise, Condescend and Agree to and with the said C. D. his Heirs and Assigns, That in case the said C. D. or any other Person or Persons by him the said C. nominated and appointed under his Hand and Seal in Writing for that purpose, shall well, truly and punctually pay or cause to be paid unto the said A. B. his Heirs and Assigns, the full Sum of 5000*l.* at the Day, Times and Place hereafter mentioned, that is to say, the full Sum of 100*l.* of lawful, &c. upon the day of next ensuing the date hereof at or in, &c. between the Hours of Two and Four of the Clock in the Afternoon of the same day, upon the Condition hereafter expressed and declared, and also the further Sum of 4900*l.* of like lawful Money at one whole and entire Payment in, &c. as aforesaid, upon the day of next ensuing the date of these Presents, without Fraud, Covin and Delay, that then upon the said several Payments duly, truly and punctually made as aforesaid, and not before or otherwise, he

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the said A. B. shall and will at the Request, Costs and Charges in the Law of the said C. D. or such his Assign or Assigns, Convey the said Premises and Manor in Fee simple unto the said C. D. or to such person or persons as he the said C. D. shall so nominate and appoint in such sort, manner and form as by his or their Council Learned in the Law shall be reasonably devised and advised, discharged or otherwise upon request freed and kept harmless of and from all Incumbrances had, made, committed or done by the said A. B. or E. B. deceased, Father of the said A. or either of them, or any person or persons claiming by, from or under them, or either of them, so as such Conveyance or Conveyances do not contain any other or further Covenants than what are expressed in these Presents, or any other Warrants than against the said A. and E. B. and their Heirs, and so as the said A. and his Heirs be not compelled to Travel further than the Cities of *London* and *Westminster* for the doing or making thereof. And also that he the said A. B. shall and will after the full, just and punctual Payments of the said several Sums as aforesaid, deliver or cause to be delivered to the said C. D. or such his Assign or Assigns all such Deeds, Evidences and Writings, Transcript, Statutes, Obligation, and other Specialties whatsoever, touching and concerning the said Manor and Premises, or any of the Lands of the said C. D. or chargeable against the said C. D. as are in the said A. B. his custody or keeping. And also consent to the delivery of what are in the custody and keeping of any other person or persons in Trust for him the said A. B. and E. B. and

and by the delivery or appointment of them and either of them. And for a further Motive and Inducement to the said C. D. for his doing his best endeavour to effect the same, the said A. B. doth further condescend and agree, That the said C. D. or such Assign or Assigns shall and may from henceforth until the said day of next ensuing the date hereof, being the day appointed for the payment of the said 100*l.* as aforesaid, have, hold and enjoy the Premises, and upon the due and punctual payment of the said 100*l.* on the day, time and place as aforesaid (and not else or otherwise) shall and may have, hold and enjoy the Premises until the said day of next ensuing the date hereof, being the day appointed for the payment of the said 4900*l.* and to take the Rents, Issues and Profits thereof during such time to his or their own use or benefit, without rendring any account for the same.

Provided always, and upon Condition, That during such time as the said C. D. or such his Assign or Assigns, shall enjoy the said Premises as aforesaid by vertue of these Presents, he the said C. D. or such his Assign or Assigns, do not willingly conceal, permit or suffer any Waste, Strip or Destruction in or upon the said Manor and Premises, or any part or parcel thereof.

Provided also, and upon Condition, That upon default of any of the Payments aforesaid, on the day, time and Place aforesaid, or any part thereof in manner and form as aforesaid unto the said A. B. his Heirs or Assigns, whether of them shall first happen, either on the said day of or on the said day of if he the

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said C. D. or such his Assign or Assigns shall not immediately from and after such default deliver and yield up the peaceable and quiet possession of the said Manor and Premises, and every part and parcel thereof, unto the said A. B. his Heirs or Assigns, without any manner of Molestation or Disturbance, Fraud, Covin or Delay, then this present Indenture, and all herein contained, shall be utterly void and of none effect.

Provided always, and upon Condition, That if the said C. D. or such Assign or Assigns, shall not duly and punctually observe, perform, fulfil and keep all and every of the Payments, Conditions, Clauses and Agreements herein contained according to the true intent and meaning of these Presents, That then this present Indenture, and all herein contained, shall utterly be void and of none effect, and that then and from thenceforth it shall and may be lawful to and for the said A. B. his Heirs or Assigns, to enter in and upon the said Manor and Premises, and the said C. D. or such his Assign or Assigns, and all and other Person and Persons whatsoever, by all lawful ways and means to remove, expel and put out, anything herein contained to the contrary thereof in any wise notwithstanding.

And it is expressed and mutually declared by these Presents, That the said 100 £. to be paid on the said day of next ensuing the Date of these Presents, shall be paid upon this Condition, That upon the default of the due and punctual Payment of the said 4900 £. on the Day, Time and Place as aforesaid, that then the said A. B. his Heirs

Heirs and Assigns, is and are to have and keep the said 100 l. in lieu and full satisfaction of all the Rents, Issues and Profits of the said Manor and Premises from the day of last past before the date hereof, unto the said day of next ensuing the date hereof, &c.

Conveyance by way of Mortgage, to be void on the Mortgagors discharging such Debts as the Mortgagee is Surety for him.

PROVIDED always, and upon Condition, That if the said A. B. (the Mortgagor) his Executors and Administrators, or any of them, shall and do well and truly content, satisfy and pay, or cause to be contented, satisfied and paid all and every such Sum and Sums of Money which the said C. D. (the Mortgagee) as Surety, and together with and for the said A. B. is and standeth bound to pay to any Person and Persons whatsoever, either by Obligation, Bill, Specialty, Promise or otherwise howsoever, according to the true intent and meaning of such Specialties, Promises, Contracts and Engagements, and shall and do at all times hereafter well and sufficiently discharge and keep harmless and indemnify the said C. D. his Heirs, Executors and Administrators, and his and their Bodies, Goods, Chattels, Lands, and Tenements, and every of them, of and from all Suits, Damages, Costs, Charges and Expences which he or they may be at or sustain by means or reason of such Suretiships, by Specialty, Promise, Contract or Engagement, That then and from thenceforth it

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it shall and may be lawful, to and for the said A. B. his Heirs or Assigns (or his Executors, Administrators and Assigns, if it be a Demise for Years) into the said Premises with the Appurtenances wholly to Re-enter, and the same to have again, repossess and enjoy, as in his or their former Estate, any thing herein contained to the contrary notwithstanding.

Security for Money Lent or to be Lent.

THIS Indenture *Tripartite* made, &c. between A. B. of, &c. of the first part, C. D. of, &c. of the second part, and E. F. of the third part witnesseth, That the said A. B. for and in consideration, and to the intent and purpose that the said C. D. and E. F. and either of them, and the Heirs, Executors, Administrators, or either of them, shall and may be well and truly satisfied, paid, contented and saved harmless, of and from all and singular such Sum and Sums of Money, as they the said C. D. and E. F. or either of them have heretofore lent or delivered to the said A. B. or to any other Person or Persons, to or for his use, or by his request, order or agreement, or which they the said C. D. and E. F. shall at any time or times hereafter lend or deliver to the said A. B. or to or for his use, or by his Order or Request; And also of, and for all such Bills, Obligations and Debts, which they the said C. D. and E. F. or either of them have heretofore made, entered into, or contracted, or hereafter shall make, enter into and contract joyntly with the said A. B. for his

his proper Debt or Debts, or at his request, hath demised, granted and to Farm, Letten, and by these Presents doth Demise, Grant, and to Farm Let unto the said C. D. and E. F. All that, &c. To have and to hold all the said, &c. unto the said C. D. and E. F. their Executors, Administrators and Assigns, from the Feast, &c. for and during, and unto the full end and Term of 99 Years, from thence next ensuing, and fully to be compleat and ended, Yielding and paying therefore yearly during the said Term, unto the said A. B. his Heirs and Assigns, the Sum of 10 l. of lawful, &c. at the first of St. Michael the Archangel, and of the Annunciation of the blessed Virgin by even and equal Portion. Provided always, and upon Condition that if he the said A. B. his Executors, Administrators or Assigns, or any of them do, and shall well and truly pay, or cause to be paid unto them the said C. D. and E. F. their Executors, Administrators or Assigns, or to any of them, all and singular such Sum and Sums of Money as they the said C. D. and E. F. or either of them heretofore have lent or delivered by way of lending to the said A. B. or to any other Person or Persons, to or for his use, or by his order, direction or request, or at any time hereafter shall lend or deliver, to or for the use of the said A. B. or to any other Person or Persons, by his order or request; and also all and singular such Sum and Sums of Money as now are, or shall be mentioned in any Bond, Bill or Obligation, or any other Specialty, Contract or Writing whatsoever, which the said C. D. and E. F. or either of them heretofore have made, entred into
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or contracted, or hereafter shall make, enter into or contract joyntly with the said A. B. and for his proper Debt, or at his request together with all such Costs, Charges, Losses and Damages whatsoever, which they the said C. D. and E. F. or either of them, their or either of their Heirs, Executors or Administrators, shall be at or sustain, for, or by reason of any such Sum or Sums of Money, Bills, Bonds, Obligations or Contract aforesaid, or any of them, either with the Rents, Issues and Profits of the Premises hereby demised, or by him the said A. B. his Executors, Administrators or Assigns, or any of them, or by any other ways or means whatsoever, that then, and from thenceforth this present Lease, Grant and Demise, and every Matter, Clause and Covenant herein contained, shall cease, determine and be utterly void and of no effect; and that then, and from thenceforth he the said A. B. his Executors, Administrators and Assigns, into all and every the said demised Premises with the Appurtenances, shall and may peaceably enter, and the same have again, retain, repossess and enjoy, any thing herein contained to the contrary notwithstanding.

A Grant

Grant of Lands by Letters Patents for 60 Years assigned in Trust to pay Debts; the Trustees in consideration of Marriage, and 6000 l. Portion with the Heir secure by Assignment, a Joynture to be made within three Years.

LETTERS Patents recited: And whereas there hath grown a Treary of a Marriage to be had and solemnised between the said A. B. and the Lady M. one of the Daughters of L. M. &c. and there being propositions made on the one part for Joynture, and of the other part for Portion, the said L. M. hath declared his intention to give for the Marriage Portion of his said Daughter the Sum of 6000 l. in case a Joynture of 1200 l. *per Ann.* could be made and settled, or secured to be settled upon the said Lady M. but the Estate of the said E. W. stands so as no such Joynture can at present be made: And whereas the Premises are trusted for the payment of Debts (if the Father died) and the Trustees have power to sell the said Premises for that purpose. Upon consideration of all which Premises, It hath been concluded and agreed by and between all the said Parties to these Presents, that all the said 600 l. Portion should be paid to the said (Trustees) for and towards the Payments of the said E. W. (the Father) according to the Trust in them reposed, and that the said Lease, &c. and other the Premises before mentioned should be conveyed to the said, &c. in such sort as are herein after mentioned, to be conveyed for the securing

curing a Joynture of 1200 *l. per Ann.* to be made to the said Lady M. in manner as is herein after mentioned, and thereupon the said L. M. hath accordingly paid and secured to be paid the said 600 *l.* Portion. Now this Indenture witnesseth, That the said (Trustees) for and in consideration of the Sum of 600 *l.* of lawful, &c. to them in hand paid and secured to be paid by the said L. M. at and before, &c. to be disposed of, for and towards the payment of the Debt of the said E. W. according to the said trust in them reposed, the Receipt and Security of all which said Money the said (Trustees) do hereby acknowledge, and thereof, &c. and for divers other good Causes and Considerations them moving, have, bargained, sold, assigned and set over, and by their Presents, &c. unto the said L. M. H. B. their Executors, Administrators and Assigns, All and singular, &c. together with the said recited Letters Patents, and all Deeds of Assignment only thereof, and all other Charters, Writings, Evidences, Escripts and Muniments, touching and concerning the said Premises only, or only any part thereof, *Habendum*, &c. Provided always, and upon this condition nevertheless, that if the said H. W. W. W. and T. W. or any of them, or any of their Heirs, or any other Person or Persons by their, or any of their Appointment or Procurement, shall at any time or times within the space of 3 Years next ensuing the date of these Presents, by good and sufficient Conveyance and Assurance in the Law, well and sufficiently convey, assure and settle a good and indefeasible Estate of Inheritance in the Law, unto or upon the said

aid Lady M. for and during the Term of her natural Life, for and in the name of her Joynture, of and in any Manors, Lands, Tenements or Hereditaments of a good Title, being not Rent-charge, Rectories nor Tithes, and within the Kingdom of England, which then shall be of the clear yearly value of 1200 l. of lawful, &c. (above all Charges, Incumbrances and Reprises, issuing and going out of the same) to take effect in Possession, either from and immediately after such Assurance within the time aforesaid made, or from and immediately after the Death of the said, &c. or if the said Lady M. shall happen to die in the mean time within the said three Years, That then, and from thenceforth in either of the said Cases, this present Indenture and the Grant and Assignment, herein contained shall cease and become void.

*Covenant that he hath not done any Act,
&c.*

A Grant of Lands for 500 Years, for securing an Annuity during the Mortgagees Life, or an entire Sum.

THIS Indenture made, &c. between A. B. of, &c. on the one part, and E. B. of, &c. in the County of, &c. on the other part witnesseth: That the said A. B. for and in consideration of the Sum of 1000 l. of lawful, &c. and for divers other good Causes and Considerations him hereunto moving, hath demised, granted, bargained, sold, and to Farm, Letten, and by these Presents doth Demise,

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Demise, &c. unto the said E. B. all, &c. Situate, Lying, and being within the Town of Hamlet, Parish or Manor of G. in the County of, &c. now in the Tenure or Occupation of, &c. his Assigns or Undertakers, together with all and singular Hedges, Hedgrows, Fences, Ditches, Mounds, Paths, Passages, Easements, Profits, Commodities, Advantages, Enrolments and Hereditament whatsoever, the said several parcels of Ground belonging, or in any wise appertaining, or reputed, or taken as part of parcel of the same, and the Reversion and Reversions, Remainder and Remainders of the said Premises, and all Yearly, and other Rents and Profits whatsoever, reserved upon any Demise made of the same, or of any part of them. To have and to hold the said several parcels of Arable Lands, &c. before mentioned or intended to be hereby demised, bargained and sold with their and every of their Appurtenances unto the said E. B. his Executors, Administrators and Assigns, for and during the Term of so many Years, from henceforth next ensuing, and fully to be compleat and ended without Impediment, of or for any manner of Waste. Yielding and paying therefore yearly during the said Term, the Rent of one Pepper-corn only, on the Feast day of St. Michael the Archangel, if the same shall be lawfully demanded. Provided always, and upon condition nevertheless, that if the said A. B. his Heirs, Executors or Assigns, shall well and truly pay, or cause to be paid unto the said E. B. or his Assigns, the yearly Rent of so much Sum of, &c. of good and lawful Money of England, for and during so many Years

the said Term, as the said E. B. shall happen to live at two Feasts or Days of Payment in the Year, (*viz.*) The Feast of the Nativity of St. *John Baptist*, and the Birth of our Lord by equal Portions, the first Payment to begin at the Feast of the Nativity of St. *John Baptist* next ensuing, the Date of these Presents, That then this present Indenture, &c. Provided also, and upon Condition that of the said A. B. his Heirs, Executors or Administrators, or any of them shall well and truly pay, or cause to be paid unto the said E. B. or his Assigns, the full and just Sum of, &c. of good and lawful Money of *England* at one entire Payment, at any time during the natural Life of the said E. B. That then also this present Indenture and the Estate hereby made shall cease, determine and be utterly void, any thing herein contained to the contrary, in any wise notwithstanding. And the said A. B. for himself, his Heirs, Executors and Administrators, and for every of them doth Covenant, Promise and Grant, to and with the said E. B. his Executors or Administrators by these Presents, that he the said A. B. his Heirs, Executors or Administrators, or some of them shall and will, well and truly pay or cause to be paid unto the said E. B. or his Assigns, the said yearly Rent or Sum of, &c. of lawful Money of *England*, until the said Sum of, &c. shall be truly paid and satisfied unto the said E. B. or his Assigns by the said A. B. his, &c. according to the true intent and meaning of these Presents.

Covenant that the Grantor is seised in Fee,
That he has full Power and Authority.
Covenant for quiet Enjoyment.

Grants

*Grants of Fee-Farm Rents, Tithes, and the
same Mortgaged.*

[I have in this President found several Recitals not very Common, specially retaining to the Fee-Farm Rents, Granted in King Charles the Second's Time, by an Act of Parliament.]

Recite the Letters Patents.

THIS Indenture made the, &c. between A. B. of, &c. of the one part, and C. D. of, &c. of the other part: Whereas the late King *James* by his Letters Patents bearing date the, &c. in the Year of his Reign (amongst other things) did Grant to E. P. of, &c. and to R. M. of, &c. their Heirs and Assigns for ever, all that Rectory and Church of K. in the County of L. with its Rights, Members and Appurtenances whatsoever, by the particulars thereof of the Annual Rent of, &c. and the Advowson, Donation, Free disposition and right of Patronage, of the Vicaridge of the Parish Church of K. aforesaid, to the said Rectory of K. belonging, appertaining, appendant or incumbent; To be holden of the aforesaid late King, his Heirs and Successors, as of his Manor of *East-Greenwich* in, &c. in free and common Socage, rendering therefore yearly to the said King, his Heirs and Successors at the Feast of, &c. by even and equal Portions by Fee-Farm Rent, or yearly Rent of, &c. And whereas the said late King *James* by his Letters Patents bearing date the, &c. (amongst other things) did Grant to the said E. P. and R. M. their Heirs and Assigns for ever, all the Rectory

and Church of, &c. in the County of, &c. with all and singular its Rights, Members and Appurtenances whatsoever, by the particular thereof of the annual Rent or value of, &c. issuing out of the Rectory, and yearly paid to the Archdeacon of L. and his Successors for a perpetual Procuration and Synodal. And the Advowson, Donation, Disposition and Right of Patronage of the Vicaridge of the Parish Church of W. aforesaid, to the said Rectory of D. belonging, appertaining, incident or incumbent, To be holden of the aforesaid late King *James*, his Heirs and Successors, as of his Manor of, &c. in free and common Socage, rendering therefore yearly at the Feast of, &c. by equal Portions the Feefarm or yearly Rent of, &c. And it is mentioned in the particular thereof, That there was yearly payable out of the said Rectory of D. by the Fee Manor of the said Rectory to the Archdeacon of L. the yearly Sum of, &c. And whereas the said late King *James* by Letters Patents bearing date the, &c. (amongst other things) did grant to E. P. and R. M. their Heirs and Assigns for ever, all that the Common with its Rights, Members and Appurtenances whatsoever, and all Houses, Edifices, Structures, Barns, Stables, Dovehouses, Orchards, Pomeries, Gardens, Lands, Meadows, Feedings, Pastures, Glebe Lands, Tithes of Grain, Lambs and Hay, and other Tithes as well great as small, And also Oblations, Obventions, Fruits, Profits, Commodities, Emoluments and Hereditaments whatsoever, situate and being growing or renewing in the Towns, Fields, Parishes or Hamlets of, &c. or in any or either of them in the said County of L. to the said Rectory of L. otherwise G. in

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Certificates by
Trustees in the
Act mentioned.

Trustees Grant.

Deed inrolled
in the Exche-
quer.

any manner belonging or appertaining by particular thereof of the annual Rent of, &c. To be holden of the said late King *James*, his Heirs and Successors, as of his Manor of *East Greenwich* in the County of *Kent*, &c. in free and common Socage, rendring therefore yearly at the Feasts of, &c. by equal Portions the Feefarm Rent or yearly Rent of, &c. as by the particulars of the Premisses certified to the Trustees by the Acts of Parliament authorized under the Hand of T. P. Auditor according to the direction of the said Acts, and remaining with the Register of the said Trustees, and as by the said several Letters Patent, relation being to them respectively had, may more at large appear. And which said several yearly Rents and Feefarm Rents issuing out of the said Rectory of D. and every of them, were by Deed indented bearing date the, &c. by T. C. E. C. C. C. R. L. and N. L. some of the Trustees appointed by the said several Acts of Parliament, granted and conveyed to the said A. B. his Heirs and Assigns for ever, as in and by the said recited Indenture and inrolled in the publick Exchequer, remaining in the custody of the second Remembrancer of the said Exchequer, relation being thereunto had may more at large appear. And whereas the said late King *James* by his Letters Patents dated, &c. did grant to R. S. his Heirs and Assigns in Feefarm for ever, All that, &c. payable yearly at the Feasts of, &c. the Fee-farm Rent or yearly Rent of, &c. as by the particulars thereof certified to the said Trustees by the Hands of T. H. Deputy Auditor, according to the Direction of the said Acts, and remaining with the Register to the said

said Trustees, and as by the said Letters Patents, relation being thereunto had, may more at large appear. And which said yearly Rent or Feefarm Rent of, &c. was by Deed indented bearing date the, &c. made by N. S. J. S. R. S. J. H. some of the said Trustees granted and conveyed to the said A. B. his Heirs and Assigns for ever, as by the said Deed inrolled as aforesaid may appear. Now this Indenture witnesseth, That the said A. B. for and in Consideration of, &c. of lawful *English Money* to him in hand paid at and before the Sealing and delivery of these Presents by the said C. D. the Receipt whereof he the said A. B. hereby acknowledgth, and thereof and of every part and parcel thereof acquitteth and dischargeth the said C. D. his Heirs, Executors and Administrators for ever by these Presents hath granted, bargained, *Bargain and* sold, demised, and to Farm letten, and by *Sale of the Premises.* these Presents doth for himself, his Heirs and Assigns, bargain, sell, demise, and to Farm let unto the said C. D. the aforesaid Feefarm Rents or yearly Rents of, &c. and every of them, by and upon the said Letters Patents severally reserved, and the said several recited Deeds indented granted as aforesaid, and all Penalties, Benefits of Forfeitures, *Namine Pana's*, Distresses, Powers and Conditions of Re-entry or Redetainers by the aforesaid Letters Patents, or any of them reserved for or by reason thereof, or incident or belonging thereunto; And all Liberties, Powers, *And all Ways* Actions, Suits, Ways and Means for the Re- *and Means of* covery of the said yearly Rents and Premises, *Recovery of the* and every or any of them, by reason or ver- *Feefarm Rents,* tue of the said Acts of Parliament, or any *See, by virtue of an Act of* of them, or the said Letters Patents, or any *Parliament.*

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Covenant, Grant or Reservation, Provision or Conditions therein mentioned or contained, or by vertue of the said several Deeds made by the said Trustees as aforesaid, or any thing therein contained; And all other Liberties, Privileges, Advantages, Commodities and Appurtenances whatsoever which the said A. B. his Heirs or Assigns, or any other Person or Persons to his or their use may have or claim by vertue of the said Letters Patents, or Deeds indented, or by the said Acts of Parliament, or any other Ways whatsoever; And all the Right, Title, Power, Interest, Claim and Demand whatsoever the said A. B. his Heirs and Assigns, of and to the said several yearly Rents, issuing and payable as aforesaid, together also with the same Deeds, To have and to hold the aforesaid several Rents or Feefarm Rents hereby granted, bargained and sold, and every part and parcel thereof reserved and payable as aforesaid; And all Benefits, Penalties of Forfeitures, *Nomine Pana's*, Advantages of Distress, Liberties and Powers to Distrain, and to deliver, sell or dispose of the same, and all Powers and Conditions of Reentry for Non-payment of the said several Rents, and all Actions, Suits, Ways and Means for the Recovery of the aforesaid hereby granted several Rents by reason or by vertue of the aforesaid Acts of Parliament, or of any of them, or of the said Letters Patents, or of any Grant, Covenant or Reservation, Provision or Condition therein contained, or of the said Deeds indented, together with the same Deeds to the said C. D. his Executors, Administrators and Assigns, To the only use and behoof of him the said C. D. his Executors,

tors, Administrators and Assigns, from the Feast of, &c. last past before the date hereof unto the end and term of 1000 Years from thence next ensuing, and fully to be compleat and ended, in as full, large and ample manner and form, to all intents and purposes whatsoever, as the said A. B. his, &c. or Assigns might, would or ought to have had, received or enjoyed the same by vertue of the said Letters Patents, Acts of Parliament, Deeds indented, or any other Act, Law, Ordinance, or Means whatsoever, yielding and paying therefore one Pepper Corn, &c.

Covenant for quiet Enjoyment (under and according to the Proviso's and Conditions herein mentioned) free and clear, &c.

Provided always nevertheless, and upon ^{Proviso.} Condition, That if the said A. B. his Executors, Administrators or Assigns, shall well and truly pay or cause to be paid to the said C. D. his Executors, Administrators and Assigns the Sum of, &c. of lawful Money of *England*, on the, &c. that then and from thenceforth the Grant, Bargain, Sale and Demise hereby made of the Feefarm Rents and Premises shall be utterly void and of no effect. And the said recited Deeds indented, made by the said Trustees as aforesaid, restored and redelivered to the said A. B. his Executors, Administrators or Assigns upon his or their reasonable demand thereof safe and uncanceled. And also upon the like demand this present Deed indented, and Counterpart hereof, and one Obligation of the date hereof, of, &c. made by the said A. B.

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To take the
Profits till de-
fault of pay-
ment.

to the said C. D. for payment of, &c. on the day of payment aforesaid, and according to the Proviso or Condition, shall mutually be yielded up and uncanceled. Provided also, That while and until default shall be made in payment of the said Sum of, &c. contrary to the said Condition, it shall and may be lawful, to and for the said A. B. his Heirs and Assigns, to his and their own use, to have, take, receive and enjoy the Fee-Farm Rents, or yearly Rents, and every of them, without the Let, or denial of the said C. D. his Heirs, Executors or Assigns. And lastly it is agreed, That the place for payment of the said Sum of, &c. on the said, &c. shall be at or in the now dwelling House of, &c. In witness, &c.

Assignment and Mortgage of Buildings, Leases and Plots of Ground in London.

Recital of a
Lease from
Parson, Church-
wardens and
Feoffees of
Building
Ground.

THIS Indenture made day of
between A. B. of, &c. of the one part,
and C. D. of, &c. of the other part:
Whereas by Indenture bearing date the
day of, &c. made or mentioned to be made
between T. H. Doctor in Divinity, and the
Church-wardens, and several other Pari-
shioners of the Parish, &c. of the one part,
and the said A. B. of the other part, they
the said Parson, Church-wardens and Fe-
offees for the Consideration therein mention-
ed, and according to, and in pursuance of
an Order made at W. did Demise, Grant,
and to Farm-Let unto the said A. B. all that
Foundation, and parcel of Ground where-
upon the late dwelling House, &c. was burnt
and

and consumed by the late dreadful Fire, lately flood, situate, &c. and containing from, &c. and all, and singular Ways, Passages, Profits and Commodities whatsoever, to the said Foundation and parcel of Ground belonging or appertaining, which said Foundation or parcel of Ground lieth between the Foundation and Ground of, &c. To have and to hold the said Foundation, &c. unto the said A. B. his, &c. for and during the Term of, &c. from thence next ensuing, and fully to be compleat and ended, Yielding and paying, &c. as in and by the said recited Indenture of Lease (amongst divers Covenants and Agreements therein contained) more at large it doth and may appear. And whereas the Mayor, Commonalty and Citizens of the City of *London*, Governors of the Possessions, &c. by their Indenture of Lease, under their Common Seal bearing date, &c. for the Consideration therein mentioned, did Demise, Lease, Grant, and to Farm Let unto the said A. B. his Executors, Administrators and Assigns, all that their plot of Ground with the Appurtenances to the same belonging, Situate in, &c. which plot of Ground is bounded, set out and described by a certain plot, or description thereof to the said last recited Indenture annexed, upon which plot heretofore stood, &c. late in the Tenure or Occupation of, &c. and all Ways, Passages, Lights, Easements, Profits, Commodities, Hereditaments and Appurtenances, to the said Premises belonging or appertaining. To have and to hold, all and singular the said plot of Ground and Premises, by the said last Indenture of Lease demised, for and during the Term,

Houses Built.

The Bargain,
Sale and Af-
signment.

&c. Yielding and paying therefore, &c as in, and by the said last recited Indenture of Lease, relation being thereunto had may more at large appear. And whereas the said A. B. hath lately erected and built upon the said Plots and parcels of Ground, by the said several recited Indentures demised, two Messuages or Tenements according to the several Covenants and Agreements therein, particularly contained now in the several Tenures or Occupations of, &c. Now this Indenture witnesseth, That the said A. B. for and in consideration of the Sum of pounds of, &c. to him in hand paid by the said C. D. at, &c. Hath granted, bargained, sold, assigned and set over, and by these Presents doth Grant, Bargain, Sell, Assign and Set over, as well the said two several recited Indentures of Lease, and the said several Plots and parcels of Ground thereby respectively demised, and all Messuages, Tenements and Buildings thereupon erected and built with their and every of their Appurtenances; as also all the Estate, Right, Title, Interest, Term and Terms of Years to come and unexpired, Property, Claim and Demand whatsoever of him the said A. B. of, in, to or out of all and singular the Premises, and every part and parcel thereof, with their and every of their Appurtenances, by force, virtue or means of the said recited Indenture of Lease, or either of them, or of any Decree made by the Court of Judicature, &c. To have and to hold the said Plots and parcels of Ground, and the said two erected Messuages or Tenements, &c. from henceforth, for and during all the rest and residue of the said several Terms

Terms of Years, by the said two several recited Indentures of Lease respectively granted, yet to come and unexpired.

Covenant that the Original Leases are good Leases.

Covenant that the Grantor hath good right and lawful Authority, &c. to Assign, and set over the said two recited Indentures of Lease, and the said Messuages or Tenements, &c.

Provided always, and upon Condition, *Proviso.* That if the said A. B. his, &c. shall, and do well and truly pay, &c. without any default *non* or abatement to be made, for, or in respect of any Taxes or Assessments whatsoever, to be imposed upon the Premises, by Authority of any Act of Parliament, or of the Common Council of the City of *London*, or otherwise howsoever, that then, &c. to be void: And then also the said C. D. his Executors, Administrators or Assigns, shall and will redeliver, or cause to be redelivered up unto the said A. B. his Executors or Administrators, the said several recited Indentures of Lease, safe, whole and uncanceled, for and notwithstanding any Writing or willing Act, *And Writings* or thing to be committed or done to the *to delivered* contrary, together with that part of these up-Presents, which is under the Hand and Seal of the said A. B. and one Bond or Obligation of the penalty of 1000 £. entred, or to be entred into by the said A. B. unto the said C. D. for the payment of the said several Sums of Money aforesaid, in manner and form aforesaid, and for performing the Covenants and Agreements herein contained, on the part and behalf of the said A. B. his Executors or Administrators, to be holden, kept

kept and performed, cancelled or to be cancelled.

Upon default of
payment to en-
ter and enjoy
clear from in-
cumbrances.

Mortgagor Covenants to pay the Money.
Upon default of Payment the Grantee to enter and enjoy; and that free and clear, and freely and clearly acquitted, exonerated and discharged, or by the said A. B. his Executors, Administrators or Assigns, sufficiently secured and kept harmless and indemnified, of and from all, and all manner of former and other Gifts, Grants, Bargains, Sales, Leases, Assignments, Surrenders, Forfeitures, Re-entries, Rents and Arrearages of Rents, and of, and from all and every other Estates, Titles, Troubles, Charges and Incumbrances whatsoever, except the Rents, Covenants and Agreements, in, and by the said several recited Indenture of Lease, respectively reserved and contained, with, from and after such default of payment made, shall on the Tenant or Lessees part and behalf of the Premisses, grow due to be paid, kept and performed: And also except one Lease by Indenture, bearing date the, &c. made of part of the said Premisses, by and from the said A. B. unto O. O. of, &c. for the Term of, &c. commencing from, &c. for, and under the yearly Rent of, &c. of lawful Money of *England*, thereby reserved payable quarterly by equal portions, which said yearly Rent of, &c. shall and may from and after such default of payment of the said Sum of pounds, or any part thereof grow due and payable unto the said C. D. his Executors, Administrators and Assigns, for and during all the then rest and residue of the said Term of, &c. by the said Indenture of Lease

Lease granted, which shall be then to come and unexpired. And moreover, that until default shall be made, of or in payment of the said Sum of, &c. or any part thereof at the place, or on either, or any of the said several days of payment thereof above limited, contrary to the true intent and meaning of these Presents, and until the said C. D. his Executors and Administrators shall enter into, and receive and take the Rents and Profits of the Premises, by vertue of these Presents, he the said A.B. his Executors, Administrators or Assigns, shall and will well and truly hold, pay, perform, fulfil and keep, all and singular the Rents, Sum and Sums of Money, Payments, Covenants and Agreements, in and by the said several recited Indentures of Lease respectively reserved, contained, mentioned and expressed, which on the Tenant or Lessees part and behalf, by vertue of the said Indenture of Lease, or by vertue of any Decree made by the said Court of Judicature, shall grow due to be paid, done, kept and performed.

Till default of payment to perform all the Covenants, &c.

Covenant or Agreement that the Mortgagor may enjoy the Premises till default of payment.

C A P.

C A P. X.

Special Covenants in Mortgages. A Clause if the Money be not paid according to the Proviso. The Mortgagee paying a further Sum, shall have the Land intirely and for ever. Covenant in Case of Fire for the Mortgagor to rebuild. Covenant that the Mortgagee shall be quitted of Suits for Waste (wilful Waste excepted.) Covenant that the Mortgagor shall procure Satisfaction upon a Judgment, or else the Mortgagee to pay the Judgment, and to be allowed it. Covenant where are two Mortgagees who paid the Money equally, that there shall be no benefit of Survivorship, and that the Money and Interest shall be equally divided. Estate is purchased, and part of the Purchase-money is paid. A Proviso that the Estate shall be void in default of Payment of the Purchase-money at the days limited. Of Redemption of Copyhold Estates. A Mortgage of Copyhold Lands by way of Covenant.

Proviso

A Clause if the Money be not paid according to the Proviso, the Mortgagee paying a further Sum shall have the Land intirely and for ever.

AND that in case the said A. B. his Executors, Administrators or Assigns do or shall make any default of Payment of the said Sum of, &c. or any part thereof, contrary to the Form of the Condition or Covenant above mentioned, Then if the said C. D. his Executors, Administrators or Assigns do and shall at any time within the space

space of Months next after any such default of Payment as aforesaid, well and truly pay or tender to be paid unto the said A. B. his Heirs or Assigns at, &c. a further Sum of 300 l. of, &c. (deducting and defalking out of the same all such Sum and Sums of Money as shall then be due and payable for the Interest of the said Sum of 500 l. above mentioned, (That then at any time afterwards he the said A. B. his Heirs or Assigns, shall and will upon the reasonable request, and at the Costs and Charges in the Law of the said C. D. his Heirs and Assigns, or any of them, well and sufficiently and in due Form of Law, Grant, Release, Convey and Assure all and singular the said Capital Messuage, &c. and Premises above mentioned, with their Appurtenances, and all his and their Estate, Right, Title, Interest, Power and Benefit of Redemption, Claim and Demand whatsoever, of, into and out of the same, and every part thereof, unto the said C. D. his Heirs and Assigns, or to such other Person or Persons as he or they shall in that behalf nominate, direct and appoint, freed and discharged of the Proviso, Condition or Agreement above-mentioned, and of all Power and Benefit of Redemption by such Assurance and Conveyance in the Law as by the said C. D. his Heirs and Assigns, his or their Council learned in the Law, shall be reasonably devised, advised or required.

Covenants

The Law of Mortgages.

Covenant by the Mortgagor in case of Fire to Rebuild.

AND further, That if by any accident of Fire or otherwise casually the said Messuages and Premisses, or any of them shall happen to be ruined or decayed during the Continuance of the respective Leases or Estates, that then the said A. B. his Heirs, Executors or Administrators, or some of them, shall and will with all convenient speed cause the same to be new erected and built in as good a condition and plight as the same was before such Accident or Casualty hapning.

Covenant that the Mortgagee shall be quitted of Suits for Waste (wilful Waste excepted.)

AND the said A. B. for himself, his Heirs, Executors and Administrators, doth Covenant, Grant and Agree to and with the said C. D. his Executors, Administrators and Assigns by these Presents, That the said A. B. his Heirs, Executors or Administrators, or some of them, shall and will acquit, defend, save, and keep harmless the said C. D. his Executors, Administrators and Assigns of and from all Suits and Demands whatsoever, for or by reason of any Waste hereafter to be committed or suffered in or concerning the said Messuages, &c. and Premisses hereby demised, or any of them, (wilful Waste to be committed by the said C. D. his Executors or Assigns only excepted.)

Covenant

Covenant that the Mortgagor shall procure satisfaction upon a Judgment, or else the Mortgagee to pay the Judgment and to be allowed it.

PROVIDED nevertheless, and it is covenanted and agreed, by and between all the said Parties to these Presents, That whereas one A. W. did heretofore obtain a Judgment for 1800 l. or thereabouts against the said A. B. that in case the said A. B. his Executors or Assigns, shall not before the day of next ensuing the date of these Presents, procure satisfaction to be duly acknowledged upon the said Judgment, That then it shall and may be lawful, to and for the said C. D. his Executors and Administrators, to satisfy and pay the same out of the 3000 l. (Mortgage Money) herein before covenanted to be paid, and that so much as shall be so paid by the said C. D. his Executors or Administrators, shall be abated and defalked out of the said Sum of 3000 l. herein before agreed to be paid, any thing herein before contained to the contrary in any wise notwithstanding.

Covenant to be free from a Mortgage certain.

AND the said A. B. doth for himself, his Heirs, Executors, Administrators and Assigns, and for every of them Covenant and Grant, Promise and Agree, to and with the said C. D. his Heirs and Assigns by these Presents, that the said A. B. his Heirs or Assigns, shall and will within the space of
one

The Law of Mortgages.

one Year next ensuing the date of these Presents, free, clear, and discharge the said granted or mentioned to be granted Premises, and every part and parcel thereof, of and from one Mortgage, or Estate heretofore made thereof, amongst other things unto Sir T. B. of, &c. or to some other Person or Persons in trust for him.

A Covenant where there are two Mortgagees who paid the Money equally, that there shall be no benefit of Survivorship, and that the Money and Interest shall be equally divided.

AND lastly it is declared and agreed, by and between the said A. B. and C. D. (the Mortgagees) and they do mutually Covenant and Agree each with the other of them by these Presents; That no benefit shall be had or taken by Survivorship of either of them the said A. B. and C. D. but that the Survivor of them his Executors or Administrators, shall stand possessed of the said Farm, Lands, Tenements and Premises, as concerning one equal moiety, or half part thereof in Trust for the Executors or Administrators, or such of them as shall happen first to die; And that all Money payable by the said Proviso before in these Presents contained, and all interest, benefit and profit to be made thereby by vertue of these Presents, shall be equally divided between the said A. B. and C. D. and between the Executors, Administrators and Assigns of each of them, severally and respectively, and between the Survivor of them the said A. B. and C. D. and the Executors or Administrators of them first dying, without any regard to be had or taken to any Survivorship.

Estate

Estate is Purchased, and part of the Purchase-money is paid. A Proviso, That the Estate shall be void in default of Payment of the remainder of the Purchase money at the Days limited.

PROVIDED nevertheless, and upon this Condition, That if the said A. B. his Heirs, Executors and Administrators shall not and do not well and truly pay or cause to be paid unto the said C. D. his Executors, Administrators or Assigns, some or one of them, the said Sum of 500 *l.* of lawful Money of England, being the remainder or residue of the said Sum of 1500 *l.* before specified on the several Days of Payment hereafter mentioned, and in manner and form following (*viz.*) the Sum of 100 *l.* of lawful, &c. on or before the day of *December* next ensuing the date of these Presents, and the Sum of 200 *l.* of like Money on or upon the day of *June*, which shall be in the Year of our Lord, &c. and the further Sum of 200 *l.* on or before the, &c. being the residue of the said Sum of 500 *l.* That then and from thenceforth this present Deed of Bargain and Sale, and every Matter and Thing therein contained shall be void and of none effect, and that then and from thenceforth it shall and may be lawful to and for the said C. D. his Heirs and Assigns, into the said Premises with the Appurtenances to reenter, and the same to have again, retain, repossess and enjoy, as in his or their former Estate; Any thing herein contained to the contrary thereof in any wise notwithstanding.

L

A Bill

The Law of Mortgages.

Redemption by
Custom.

A Bill in *Chancery* was brought to be admitted to Copyhold by the Surrendree (the Lord and Steward being both made Defendants) because no Action on the Case lies against the Lord for not admitting; and this was only to try a Title there; *i. e.* to enable a Mortgagee to try a Custom there, that if Money be paid after the day, so as it be before Entry of the Surrender made by the Mortgagee, that it is a sufficient Redemption. The Master of the Rolls decreed the Plaintiff should be admitted; but the Court reserved this with the Equity of the main Profits, until Trial of the Custom had in the Manor. 2 *Keb.* 357. *Towell and Cornish.*

*D. d. of Gov. n. Subsequent to a
A Mortgage of Copyhold Land by way of
Covenant.*

Recital of the
Surrender on
Condition.

THIS Indenture made, &c. between A. B. of, &c. of the one Part, and C. D. of, &c. of the other Part, Witneseth, That whereas the said A. B. hath now lately Surrendred into the Hands of the Lord of the Manor of, &c. by the Rod, according to the Custom of the said Manor, by the Hands and Acceptance of O. O. and P. P. two of the Customary Tenants of the said Manor, All that Messuage, &c. All which Premises are situate in R. in the Parish of, &c. to the use of the said C. D. his Heirs and Assigns, To hold according to the Custom of the said Manor, with a Proviso and upon Condition, That if the said A. B. his Heirs, Executors or Administrators do and shall well and truly pay or cause to be paid unto the said C. D. his

his Executors or Administrators the full Sum of, &c. in manner and form following, &c. then the said Surrender to be void and of none effect, as by a Note or *Memorandum* of the said Surrender taken out of the Court the day of the date hereof, and hereunto annexed more plainly appeareth. Now the said A. B. doth covenant and pay the Money, &c. at the Days and Place and in manner and form in the said Proviso or Condition of the said Surrender before recited, limited and appointed for payment thereof. And further the said A. B. for himself, &c. doth Covenant, &c. to and with the said C. D. his Heirs and Assigns in manner and form following (that is to say) That he the said A. B. at the time of the making of the said Surrender before recited, had a good Estate of Inheritance in Fee simple according to the Custom of the said Manor of, &c. of and in all and singular the said Messuages, &c. and Premises before mentioned, to be surrendered, and had good Right and lawful and absolute Power and Authority in himself to surrender the same and every part thereof unto the said C. D. and his Heirs, in manner and form aforesaid; and that the same are free from all former Surrenders and Incumbrances whatsoever.

That he is Seised in Fee, and hath good Right.

Covenant for quiet Enjoyment in default of Payment.

Covenant for further Assurance.

Act and Acts, &c. be it by Fine or Common Recovery, according to the Custom of the said Manor, Surrender, Release or Confirmation, or all or any of the said Ways or

L. 2

Means,

The Law of Mortgages.

Means, or by any other Ways and Means whatsoever, as by the said, &c.

Till default of Payment the Mortgagor to take the Profits.

C A P. XI.

Accompt, Interest, Profits. All Money paid as Surety to be reckored as Principal money from the time of Payment. Interest for Interest. Mortgagee assigning, Assignee shall have Interest for the Interest then due. Interest allowed to the Plaintiff at 5l. per Centum, and to the Defendant at 6. Interest lost from the Tender. From what time and how far to Account. Account from the time of the Purchase. Account before the Assignment and after. Mortgagee assigns, and decreed to Account for the whole time. Account so far only as goes in Discount of the money. Mortgagee of an Estate for Life on an old Mortgage, shall Account for no more than the Estate had been worth to be sold, without respect had to the Benefit that happened by continuance of Life, but the Parliament upon Appeal directed otherwise. Prior Mortgagee upon Redemption by the second Mortgagee to be charged with the Profits received after the second Mortgage. Where Conusee shall Account according to the true value or extended value. Verbal Agreement after the Mortgage executed. That if the moneys were not paid at the day, that the Mortgagee should cut the Emblements on the Land: Prays Account and had it. Bill by several Mortgagees against

against a pretended Heir in Tail to discover his Title, and what other Estates and Incumbrances are prior to the Mortgages to foreclose the Equity of Redemption, and to confirm their Title to the Mortgaged Premises.

T*Rin. 2 Car. 2. Bridgman* Lord Keeper, and *Grimston* Master of the Rolls, declared, as a Rule and Course of the Court on reference to state an Account upon a Mortgage, That all Money paid as Surety, Money paid as Surety to be reckoned as Principal Money from the time of Payment, and Interest to be allowed according. 2. If Lands in Fee and for Life are joined in Mortgage, if the Fee be not sufficient at the time, the Life shall be valued only as it was at the time, six or seven Years Purchase, and not according to the Enjoyment since, be it Twenty Years or more. 2 *Keb. 376. Morley and Elwis in Chancery.*

Mich. 26 Car. 2. The Lord Keeper declared it as a Rule on a Mortgage forfeited, the Mortgagee shall have Interest for his Interest, Interest for Interest, and shall be only accountable for what Profits he should receive, and not for what he might have received, unless there be a Fraud, *Ch. Cases 258.*

It was always the Rule, That the Mortgagee assigning, the Assignee should have Interest for the Interest then due, and never was contradicted but in *Porter and Herbert's Cases* in *Shaftbury's* time, *Id. ibidem.* Mortgagee assigning, Assignee shall have Interest for the Interest then due.

In *Holman and Vaux's Case*, 13 *Jac.* the Mortgagee was ordered to account for the Profits received, and for the use of those Profits. *Tothil. 230.*

Interest allow'd
to the Plaintiff
at 5 l. per Cent.
to the Defen-
dant at 6.

Interest lost
from the Ten-
der.

The *Chancery* seldom allows to the Plaintiff above 4 or 5 l. per Cent. Interest for Money, because he was to reduce the Duty and the Increase, but to the Defendant they usually allowed 6 l. per Cent. because he usually lost something besides the Principal. 2 Keb. 187. *Some and Parker.*

A Mortgagor refusing to receive his Money on Tender after Forfeiture, shall lose his Interest from the Tender. *Ch. Cases 29. Manning's Case.*

From what time to Account, and how far.

Lands were extended 1 Car. 1. and held in Extent; and a Bill exhibited to redeem, and being not redeemed, the Bill was dismiss'd in 16 Car. 1. and afterwards he who had the Extent by vertue of the said dismissal, sold the Premises to the Defendant, but the Plaintiff having since bought the Equity of Redemption, seek'd a Redemption. The Court notwithstanding the dismissal and length of time, ordered an Account from the time of the Purchase, but no Account from any time before, but the Profits to go against the Interest to that time. 2 Rep. Ch. Cases 392. *Clo-berry and Symonds.*

Account from
time of the
Purchase.

Account before
the Assignment
and after.

Mortgagee As-
signs, and de-
creed to Ac-
count for the
whole time.

In the Case of the Assignment of a Mortgage, the Mortgagee was ordered to Account before the Assignment, and after it. *Ch. Cases 3.*

Mortgagee after Forfeiture assigns, and is decreed to Account for the whole time, with the Assignees being made a Party. *Ibid.*

A Bill was brought 20 Car. 2. to redeem a Mortgage made in 1632. It was insisted by the Defendant that he came in as Assignee at the third hand, and it would be hard to put the

him to Account now, and by the Lord Keeper, in regard there had been no stint put to the time a Mortgage is to be redeemed, the Defendant shall come to an Account; but in regard he comes in at another hand, shall not Account but so far only as goes in Discount of his Money, but not for the Surplusage. *Cb. Cases 102. Pearson and Pulley.* Account so far only as goes in discount of the Money.

Bridgman and Grimston.

It was held by the Court in *Morley and Ellway's Case*, as a Rule and Course of the Court, on reference to a Master to state an Account upon a Mortgage, That all Money paid as Surety shall be reckoned as Principal Money from the time of Payment, and Interest to be allowed accordingly. *2 Keb. 276.*

It was held by the Court, That a Mortgagee of an Estate for Life on an old Mortgage shall Account for no more than the Estate had been worth to be sold, without respect had to the Benefit that happened by the continuance of the Life. *Cb. Cases 107. Morley, &c.* Yet upon Appeal to the Parliament ordered otherwise, and the Mortgagee directed to Account for the whole Profits of the Estate for Life; as in the Case of other Mortgagees, if Lands in Fee and for Life are joined in a Mortgage, if the Fee be not sufficient at the time, the Life shall be valued only as it was at the time, 6 or 7 years Purchase, and not according to the Enjoyment since, be it 20 Years or more. *Ibid. Morley and Ellway, ut supra.* Mortgages directed to Account for the whole Profits of Estate for Life.

The prior Mortgagee upon Redemption by the second Mortgagee, shall be charged with the Profits by whomsoever received after

after the second Mortgagee, but not before.
2 Rep. in Ch. Cases 209. Maddox Case.

At Common Law the Conusee must bring a *Scire fac' ad computandum*, but then the Conusee shall not Account according to the true Value, but according to the extended Value. But if the Conusee will sue in a Court of Equity, then he shall bring him to Account for what he hath received of the Profits above the extended Value. 2 Vent. 337.

Where the Conusee shall Account according to the true Value, &c.

Goff and Skipton.

In the Court of Requests. Goff borrowed Money of Skipton, and gave a Term for years of which he was possess'd for Security by Indenture, with a Proviso of Redemption, and shews further in his Bill, that there was a verbal Agreement between them, that if the Money was not repaid at the day, the Testator should cut the Emblements growing upon the Land: And if the Emblements amounted to the value of the Money, that then he shall have his Term again, and that he did reap the Emblements accordingly, by which the Money was well satisfied, and yet he continues the Possession of the Term, which afterwards came to Skipton and is unexpired, and so prays that the Defendant may Account for the Profits. The Defendant moved for a Prohibition in B. C. and by Richardson, although the Trust is contrary to the Indenture, yet such Averment is good notwithstanding the Proviso. But because Executors shall Account to none but the King, and the years now spent, and although he occupy himself, yet the Profits are Assets; and if he should recover in a Court

After a Mortgage executed, a verbal Agreement if the Money were not paid at the day, the Mortgagee should cut the Emblements on the Land, and pay Account.

The Averment good, notwithstanding the Proviso.

Court of Equity, it should be a Devastavit against the Executor, and by all the Court a Prohibition was granted. *Lit. Rep.* 211.

Bill by several Mortgagees against a pretended Heir in Tail to discover his Title, and what other Estates and Incumbrances are Prior to the Mortgagees, to foreclose the Equity of Redemption, and to confirm their Title to the mortgaged Premises.

HUmblly complaining, shew unto your Lordship your Orators A. B. of, &c. C. D. of, &c. E. F. &c. That T. C. of the Parish of D. in the County of H. Gent. deceased, being in his life time, (*viz.*) in or about the Month of *March*, 1658. seised in his Demesne as of Fee-simple, of and in all that capital Messuage or Tenements with the Appurtenances called the *Home*, &c. lying in the Parish of D. aforesaid, and of several Lands, &c. thereunto belonging, and being so seised, and having occasion for the Sum of 5000 *l.* did borrow the Sum of J. L. late of, &c. Widow, and for the securing the payment thereof with Interest, he the said T. C. by an Indenture bearing date, &c. made between the said T. C. of the one part, and the said J. C. of the other part, for and in consideration of the Sum of 500 *l.* &c. did Grant, Bargain and Sell unto the said J. C. all that capital Messuage, &c. and all other the Lands, Tenements and Hereditaments, of the said T. C. lying in the Parish of D. aforesaid, whereof or wherein E. C. Widow deceased, late Grandmother of the said T. C. was seised, possessed or estated, at and before

fore the time of her Death, or which were by her had or enjoyed, together with the said capital Messuage. To have and to hold, &c. the Term of 500 Years, then next ensuing, &c. yielding and paying one *Pep-per-corn*, &c. under a Proviso or Condition nevertheless in the said Indenture contained, that if the said T. C. his Heirs, Executors, Administrators or Assigns, or any of them, did or should pay or cause to be paid unto the said J. C. her Executors, Administrators or Assigns, at her then dwelling House, at, &c. on the 29th. of *Sept.* next ensuing the date of the said Indenture, &c. That then and from thenceforth the Estate and Term thereby granted or mentioned to be granted should cease, determine and be utterly void, as in and by the said Indenture (whereunto your Orators refer themselves) more at large appeareth. And your Orators further shew, That the said Mortgage Money was not paid at the days and times in the said Proviso mentioned, whereby the Estate in Law became absolutely vested in the said J. C. her Executors, Administrators and Assigns, for the remainder of the said Term of 500 Years; and the Interest of the said J. C. after her death, in, and to the said mortgaged Premises, did by vertue of her Will, and by vertue of an Assignment from E. M. the Executor of A. M. who was Executrix of T. M. who was Executor of the said J. C. came to and vested in one H. C. of, &c. he the said H. C. by Indenture bearing date, &c. made between H. C. of the one part, and J. B. of, &c. of the other part, for and in consideration of the Sum of 365 *l.* of, &c. to him in hand paid by the said J. B. he the said H. C. did

did Grant, Bargain, Sell and Assign, and set over unto the said J. B. his, &c. all and singular the said capital Messuage, &c. and all the Premises in the first recited Indenture mentioned, &c. *Habend.* &c. unto the said J. B. &c. for, and during all the residue of the said Term therein, then to come and unexpired, in as large, ample and beneficial manner, as he the said H. C. and J. C. and A. M. or any, or either of them might, would or should enjoy the same to all intents and purposes, as in and by, &c. and afterwards by Indenture bearing date, &c. made between the said J. B. of the one part, and W. W. of, &c. of the other part, he the said J. B. for and in consideration of the Sum of 340 *l.* of, &c. did Grant, Bargain, Sell, Assign, and set over unto the said W. W. &c. all the before mentioned Premises granted to the said J. C. in or by the aforesaid Indenture, and every part, &c. To have and to hold the said capital Messuage, &c. unto the said W. W. her, &c. for and during all the rest and residue of the said Term of 500 Years then to come and unexpired, with a Proviso, &c. (and so mention the Proviso for 340 *l.* and Interest at certain days and times in the said Indenture mentioned, &c. as in and by, &c.) And your Orators further shew, That by the Indenture bearing date, and duly executed in or about, &c. made between the said W. W. of the one part, and your Orators C. D. and E. F. of the other part, he the said W. W. for and in consideration of the Sum of 378 *l.* 16 *s.* of, &c. to him in hand paid by your said Orators C. D. and E. F. did Grant, Bargain, Sell, &c. unto your said Orators C. D. and E. F. all that the said capital Messuage aforesaid

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said, &c. and Premises expressed and contained in the said several recited Indentures, or any of them, with their and every of their Appurtenances, and all the Estate, &c. To have, &c. from the day next before the date of the said Indenture, &c. as in and by, &c. And your Orators further shew, That the said 378 l. 10 s. so paid unto the said W. W. was the proper Money of your Orator A. B. and that their Names were only made use of in the said Assignment in Trust for him, and they have by a Deed or Declaration of Trust, bearing date the same 13th day of *March*, &c. declared the same so to be. And your Orators further shew, That the said T. C. having occasion several times for Money, your Orator did lend to, and supply him with 1120 l. of, &c. and for securing the repayment thereof with Interest, by Indenture bearing date, and duly executed on or about the, &c. made between the said T. C. of the one part, and A. B. of the other part, he the said T. C. for and in consideration of the said Sum 1120 l. of, &c. to him in hand paid by your Orator A. B. did Demise, Grant, &c. Bargain and Sell unto your Orator A. B. his, &c. all the said capital Messuage &c. and also all other Messuages, &c. in the Premises of D. and W. or elsewhere in the said County of H. and the Reversion and Reversions, &c. and all and every the Deed, &c. To have and to hold, &c. unto your Orator A. B. his Executors, Administrators and Assigns, from the sealing and delivery of the said Indenture, for and during, and unto the full end and term of 100 Years from thence next ensuing, and fully to be compleat and ended, without Impeachment of,

or for any manner of Wast (under a *Pepper-Corn*) Under a Proviso or Condition nevertheless, that if the said T. C. his Heirs, Executors, Administrators or Assigns, &c. should pay 1136 l. 16 s. on, &c. next ensuing, then to be void, as in and by, &c. And your Orators further shew, That the said T. C. before he paid the 1136 l. 16 s. or any part thereof, or the said 378 l. 16 s. due on the said C's Mortgage, or any part thereof, or any Interest for the same (that is to say) on or about the Month of, &c. *Anno*, &c. died, D. C. of D. *grad* Gent. his Son and Heir, to whom the Inheritance and Equity of Redemption of the said mortgaged Premises is descended, and come, and he ought to pay unto your Orator A. B. the said several Sums of 378 l. 16 s. and 1136 l. 16 s. with Interest, and his Costs and Charges which he hath been at, in relation to the Mortgages and mortgaged Premises, which your Orator in a friendly manner hath requested him to do. But now so it is, May it please your Lordship, That the said T. C. in combination and confederacy with some Persons unknown to your Orators (whose names, &c.) he doth endeavor as much as in him lies to defeat and defraud your Orator A. B. of the said 1136 l. 16 s. and Interest due on the said last mentioned Mortgage, and in order thereunto doth give out in Speeches, that the said T. C. his Father on Marriage neither E. C. his Mother, who was the Daughter of the said J. B. did, in or about the Month of, &c. *Anno*, &c. enter into, and become bound unto the said J. B. in a certain Bond or Writing, Obligatory of a great Penalty conditioned, that he the said T. C.

in

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in a short time in the Condition of the said Bond prefixed, settled in Joynture upon the said E. C. and the Heirs of their two Bodies, the Manor of the *Home* and all other the Lands which were formerly the Joynture of E. C. his Grandmother, &c. upon himself for Life, and after his Death to the Heirs of his Body on the Body of the said E. and for want of such Issue to his own right Heirs, or to some such effect. And the said T. C. doth pretend, that by vertute of the said Bond he is intituled to the said Premises as Heir in Tail; and that your Orator A. B's Mortgage being subsequent to the said Bond cannot affect the Estate, although the said T. C. well knows, and so the truth is, that the said J. B. never performed the Marriage Agreement on his part; and that the said T. C. the Father never made any Settlement pursuant to the said Bond, but after the time of his entring into the said pretended Bond, but after the time of the said Marriage, the said F. C. the Father by Articles under Hand and Seal, bearing date on or about, &c. contracted to Sell all the said Premises called the *Home*, &c. unto one H. W. and his Heirs, and the said T. C. levied a Fine of the said Premises unto the said H. W. and his Heirs, but made no Conveyance to lead the Use thereof, which said Fine so levied as your Orator A. B. is advised doth destroy the Estate Tail, which according to the Condition was to be settled in case any Settlement had been made, and doth enure to the use of the said T. C. the Father and his Heirs, and gave him good power to make the said Mortgage to your Orator A. B. and at other times the said T. C. the Son doth

pre-

pretend, that the said mortgaged Premisses are not worth the Money due to your Orator A. B. thereon (the said E. C. the Mother having an Estate for Life in the said Premisses called the *Home*, &c.) which your Orators cannot controvert, nor do by this Bill seek any relief against the same, but are willing and contented that she should enjoy the same during her Life : And that if your Orator A. B. enters into the said Premisses called F. that your Orator shall be no better than his Bailiff, and that he will call your said Orator to an account for the same when he pleaseth, and also pretends that the same Premisses are charged with, and liable to former and other Estates, Grants, Mortgages, Judgments, Leases, and other Incumbrances made in time before the said Mortgages, under which your Orators claim as aforesaid, but to whom, when and for what, or by whom entred into the said T. C. the Son refuseth to discover. And your Orator A. B. having occasion for his Money cannot dispose of the Premisses to any Purchasor, and thereby raise and repay himself his said Mortgage Money and Interest, unless he had the Premisses in quiet Possession, freed and discharged of the equity of Redemption of the said T. C. the Son, and he release his interest and equity of Redemption, of and in the said Premisses to your Orator, as he ought to do in case he refuseth to pay what is due to your Orator A. B. by a short day to be limited by this Honourable Court. In tender Consideration whereof, and for as much as your Orators are remediless in the Premisses, &c. To the end therefore, that the said F. C. the Son may set forth
and

and discover whether he doth not believe, or hath heard that the said T. C. his Father did make such Mortgage to the said J. C. as herein before is set forth, and for what Consideration, and whether he had good Right, Power and Authority to make the said Mortgages, and whether the said Mortgages are forfeit, and whether the said T. C. the Father did not enter into any Bond to J. B. to make a Joynture of the said Premisses to his Wife, and the true date and contents of the Bond, and whether any Settlement was ever made and executed by him pursuant to such a Bond, and when, and the date and contents of the same, and who are Witnesses thereto, and where they live, and whether the same was sealed and executed on the day it bears date, and whether the said T. C. the Father did make such a Contract, and levy such a Fine to H. W. as aforesaid, and may also set forth what Deeds, Evidences or Writings, he or any for him hath, or had, or can come by concerning the Title of the said Premisses, and in whose hand they now are or lately were, and what Mortgages, Estates, Statutes, Judgments or any other Incumbrances, and of what nature or kind the said Premisses, or any, or what part thereof are liable unto, or, charged or chargable with, and to whom, and by whom, and when, and upon what consideration, really and *bona fide* entered into, and Covenants really due thereon, and what is the true Yearly value of the said Premisses, and that the said T. C. may true answer make to all and singular the said Premisses, and may be compelled by the Decree of, &c. to pay unto your Orator

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A. B. the said principal Mortgage Money due on the said Mortgages, and Interest for the same, and his Costs and Charges, by a time to be for that purpose prefixed by this Honourable Court, or in default of payment thereof, at such a time and place as this Court shall direct, that your Orators, their Executors, Administrators and Assigns, may hold and enjoy the said mortgaged Premises, against the said T. C. during the remainder of the said several Terms, free and clear from all right and equity of Redemption, of the said T. C. or any claiming by, from or under him, and that the said T. C. may deliver to your Orator all the Deeds and Writings, which any ways concern the said Premises or any part thereof, and release the said Provisoes or Conditions in the said Mortgage to your Orators respectively, and make futher assurance, and that your Orator may be relieved, &c.

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C A P.

The Law of Mortgages.

C A P. XII.

Devise of Mortgaged Lands and of Mortgage Money. What passeth in a Will by these words, all my Mortgages. Where Lands are decreed to the Devisee of the Mortgages, to be sold for payment of Debts. Where a Devise is absolute and concludes the Heir of Equity. Pleadings. A thing Mortgaged shall not be intended to be redeemed without shewing it expressly. A Special Plea in Bar answered with a Special Replication. Indenture of Mortgage, no Estoppel to say the Defendant had no Estate in Covenant, but in Debt for Rent it is Evidence. The Court will set aside an Evidence that may let himself into a certain Interest, though but in Equity. What shall be good Evidence of Payment of Mortgage Money. Trial of the validity of a Mortgage.

A Man seised of *Black Acre* in Fee, and seised also in Fee of other Lands upon a Mortgage made to him by J. S. which is not forfeit, and deviseth *Black Acre* in Fee to his Brother, and all the residue of his Goods, Leases, Mortgages, Estates, Debts &c. he gives to his Wife, the Wife shall have an Estate for Life in the Lands mortgaged, but not a Fee, for it is coupled with Chattels. 1 *Rols Abr.* 831. 834. *Wilkinson's Case*, Cr. Car. 447. 449. The same Case. Had he devised his Estate in such Land the Fee had passed, or had he mentioned, that he had such Land mortgaged in Fee. One Mortgages Lands in Fee to J. S. and his Heirs upon Condition, if he or his Heirs pay to J. S. and his Heirs 160

upon

upon such a Day that he might Re-enter, before the Day the Mortgagee gave to R. K. all his Goods, Moneys, Bills or Bonds, Mortgages or Specialties for Moneys, and made him Executor and died, R. K. entred, the Money not being paid. *Per Cur.* These words (all my Mortgages) made a good Devise of the Lands mortgaged. *Cr. Car. 37. Crips and Gryff's Case.*

In *How and Vignres's Case*, It was decreed, that the Heirs of the Mortgagor shall repay the Money with Damages, and in default the Premises are decreed to the Devisee of the Mortgagee, to be sold for the satisfaction of his Debt. *1 Ch. Rep. 32.*

A Man upon Marriage Covenants to pay his Wife 1000 *l.* within two Years after his decease, and gave a Statute for performance, but before this he had mortgaged his Land for 500 *l.* for Years; he afterwards devised these Lands to his Wife and her Heirs, if the 1000 *l.* were not paid to her according to the Marriage Covenant, she paying off the 500 *l.* he died and made his Wife Executrix, to whose Hands Assets came; the 1000 *l.* was not paid to the Wife, she paid off the 500 *l.* and had the Mortgage assigned, she then conveyed the Lands in Fee by Fine; the Heir of the Covenantor would redeem paying the 1000 *l.* and the 500 *l.* with Interest upon the discount of the Profits. *Per Cur.* The Devise to the Wife is absolute, if the 1000 *l.* were not paid, which deprives the Heir of the Covenantor of any right of Redemption. *Hard. 551. Sir N. Woolston and Aston's Case.*

Where a Devise is absolute and concludes the Heir of Equiry.

The Law of Mortgages.

Mortgagee remits by his last Will part of the Mortgage Money, and all the Interest if the rest be paid within three Years, the Mortgagor failing to pay within three Years, loseth the benefit of the request. *Ch. Cases p. 52. Sir Thomas Littleton's Case.*

Pleadings.

The Condition of a Bond was E. T. had bargained and sold such a Close of Pasture called, &c. and whereas the said E. T. hath by Indenture of Mortgage mortgaged to J. S. divers Lands in G. whereby the Close of Pasture is either mortgaged or supposed to be mortgaged upon condition for payment of a certain Sum at a Day yet to come, if therefore the said Close of Pasture at the Day mentioned in the said Indenture of Mortgage be redeemed, set free and discharged from all Titles, &c. which may grow by reason of the said Mortgage, that then, &c. The Defendant pleads in Bar, That the Close mentioned in the Condition was not mortgaged to J. S. & sic dicit quod Clausum præd, &c. fuit Redempt' liberat' & exonerat', &c. The Plaintiff replies, That the Close, &c. was mortgaged to the said J. S. and upon this Issue joyned, and found for the Plaintiff. It was moved in Arrest of Judgment, That the Replication was not good, for the Plaintiff ought to have replied, it was mortgaged to the said J. S. and is not redeemed; for though it were mortgaged, yet the Condition by the Mortgage only is not broken, for it may be that notwithstanding the Mortgage, that before the Day set it was redeemed.

deemed. But *per Cur.* In this case the Defendant by his Plea offers an Issue, (*viz.*) That the Close was not mortgaged, which is a particular Point to which the Plaintiff ought to answer; and so he does when he replies, (*viz.*) That the Close was mortga-

ged, and then the Parties are at a certain Issue, and so need not alledge that it was not redeemed, for there shall never be intended any Redemption, because the Defendant pleads it was not mortgaged; as if

A thing mortgaged shall not be intended to be redeemed without shewing it expressly.

J. S. be bound to Marry the Daughter of J. D. before *Easter-day* next, in Debt upon this Bond, if J. S. pleads that the Daughter of J. D. died before *Easter-day*, this is a good Plea; and also it is a good Replication to say,

That the Daughter was alive on *Easter-day*, without saying that he had not married her, because a special Plea in Bar is always answered with a special Replication in the Point which is alledged. *Telv. 24. Baily and Taylor. Vide this Case of Cro. Eliz. p. 899.*

A special Plea in Bar answered with a special Replication.

In Covenant on a Mortgage by the Defendant to the Plaintiff, to pay so much Money seven Years hence, and so much Yearly out of the Land in Lease to J. S. The breach was assigned that the Defendant had no Estate to convey. The Plaintiff on *Oyer* of the Indenture pleaded, that J. S. was Tenant

per Vis, and that the Defendant was seised in Fee of the Reversion sufficient to Convey.

Indenture of Mortgage, no Estoppel to say, the Defendant had no Estate in Covenant, but in Debt for Rent

The Plaintiff Demurs: *Per Cur.* The Indenture of Mortgage is no Estoppel to say the Defendant had not Estate in Covenant, but in Debt for Rent, &c. it is. 3 *Kep. 712*

Cordinglee and England's Case.

say, the Defendant had no Estate in Covenant, but in Debt for Rent it is.

Evidence.

Court will set aside an Evidence that may let himself into a certain Interest, though but in Equity.

In Ejectment on Extent, on Mortgage in a Trial at Bar. The Defendant excepted to a Witness, because his Father my Lord G. paid a Debt, as Security with the Defendants elder Brother for the Defendants Father; but there being no Counterbond, and therefore doubtful in Equity, whether he as Heir could recover any thing against the Defendant as Heir, the Court Swore him; but if he were to let himself into a certain Interest, though but in Equity, the Court would set him aside. 2 Keb. 345. *Vincent and Tiringham's Case.*

What shall be a good Evidence of payment of Mortgage Money.

It was a Question in *Goddard and Complin's Case*, Whether the Defendant had proved payment of the Money supposed to be Lent, and as to that there was the Receipt in the Deed of Mortgage, the Condition of Redemption on repayment of the Money; and the Defendants Oath that he had paid it, which was Evidence enough after ten Years against any Person, and so the Court enclined.

In Evidence to a Jury the Issue directed out of Chancery was, Whether Money was paid for the Mortgage of *White Acres*; if it were paid for *White Acre* and *Black Acre* Altes well enough, and as if it were upon whether a Common from *Lady-day* to *Michaelmas*, and the Jury found from *Christmas* to *Michaelmas*, and good. 1 Keb. 192. *Levet and Crane's Case.*

Trial.

Trial.
XIX A C

The Mortgagee Purchaseth the Land mortgaged: The Plaintiff who had Title of Redemption, would before he Redeem have the validity of the Mortgage tried at Law. But the Court ordered that the Plaintiff should declare, whether he will redeem or not, before the validity of the Mortgage shall be tried, it being against the Rule of Justice, for the Plaintiff to have the Equity of Redemption from the Defendant, after he had endeavoured to avoid his Title. *1 Cb. Rep. 169. Smith and Valence's Case.*

A Trial of the validity of a Mortgage.

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C A P.

C A P. XIII.

Equity of Redemption. Who shall be made Parties to a Bill for Redemption. Who shall or may redeem. And shall be compelled to redeem, in 2 or 3 Rules. Where a Devise deprives the Heir of the Covenantor of the Equity of Redemption. Executor decreed to hold the Land till Money laid out upon Redemption was raised. Whether Mortgagee shall have Equity of Redemption against the King. Where Mortgagees Oath upon Account shall Bind. Within what time a Mortgage is to be redeemed. Where the Court would not relieve, though the Mortgagee confess he was satisfied. Plea and Demurrer to a Bill of Redemption. Presumption by Circumstances that nothing is due upon a Sleeping Mortgage. Mortgages not to be relieved except in some Cases. The nature of a power of Redemption. Voluntary Deed good to pass the Equity of Redemption. Where Issue in Tail shall be bound in Equity of Redemption. What will extinguish Equity of Redemption at Law. Equity of Redemption assignable and devisable. One decreed to pay the Mortgage Money, and also Money since borrowed on Bond. Mortgagor if he redeem, to pay all Costs.

Who must be made Parties or not.

THE Heir of the Mortgagee exhibited a Bill to have the Mortgagor pay the Money or be decreed to make further assurance, and be foreclosed of Redemption: It was demurred to, because the Executor of the

the Mortgagee who might have Tide to the Mortgage Money was made no Party, and the Demurrer was allowed. *Chanc. Cases 51. Freake and Hersey.*

Who shall or may Redeem, and who shall be compelled to Redeem.

It is holden for a Rule, That none can Regula. come to Redeem a Mortgage, when the Mortgagee cannot compel the payment of the Mortgage Money, for the Remedy ought to be reciprocal.

Creditors on Judgments and Bonds shall Creditors. be decreed to Redeem Mortgages on satisfaction of their Debts, 1 *Rep. Chanc. Cases 396.*

If the Executor hath Assets, he is com- Executor. pellable to Redeem a Mortgage for the Benefit of the Heir.

A Man upon Marriage covenants to pay his Wife 1000*l.* within two Years after his decease, and gave a Statute for performance, but before this he had Mortgaged his Land for 500*l.* for Years; he afterwards devised these Lands to his Wife and her Heirs, if the 1000*l.* were not paid to her according to the Marriage Covenant, she paying off the 500*l.* He died and made his Wife Executrix, to whose hands Assets came, The 1000*l.* was not paid to the Wife, she paid off the 500*l.* and had the Mortgage assigned; she then conveyed the Mortgage Lands in Fee by Fine. The Heir of the Co-venantor would redeem, paying the 1000*l.* and the 500*l.* with Interest upon the Discount of Profits, *Per Cur'* the devise to the Wife is absolute if the 1000*l.* were not paid, which

A Devise de-
prives the Heir
of the Cove-
nantor of Re-
demption.

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which deprives the Heir of the Covenantor of any Right of Redemption. *Hards* 511. *Sir Mich. Woolston* and *Aston*.

Executors decreed to hold the Land till Money laid out upon Redemption be raised.

Articles were made before Marriage, that the Husband's Lands should be settled upon himself and his Wife and the Heirs of his Body by the Plaintiff. The Husband dies before the Articles were executed, and Settlement made; she exhibits her Bill to have the Articles executed, which was decreed. But the Land was Mortgaged to one who had no notice of the Articles. It was decreed, That the Plaintiff should redeem and hold for her Life, and that her Executors should detain the Lands till the Money was raised that she had laid out upon the Redemption. 2 *Vent.* 243. *Haymer* contr' *Haymer*.

Whether Mortgagee shall have Equity of Redemption against the King.

A Mortgage in Fee is forfeited, Mortgagee dies, his Heir is attainted of High Treason by Act of Parliament, the King seifeth; whether the Mortgagee hath Equity of Redemption against the King. *Hards.* 465. *Vid.*

24 Octob. 1674. 26 Car. 2. Lord Keeper *Finch*, *Sherman* Plaintiff, *Cox* Defendant.

Robins Mortgaged his Estate Aug. 5. 1650. to *Smith* for 99 Years.

Novem. 5. to *Partridge* for 40 Years.

1654 and 55. to *Sherman* the Plaintiffs Husband for 1500l. Afterwards to one *Browning*, and then *Browning* buys in the two first Mortgages.

1664. *Sherman* the Plaintiff Administers *dur' minor' etat'*, and exhibits a Bill against *Robins* and *Browning*, and sets forth their Title to discover the Defendants Title and Redeem, and

and Defendants answer, but no further Proceeding.

Whereby he had notice of the Plaintiffs Title.

1666. *Browning* exhibits a Bill against *Robins* alone, to redeem or be precluded.

All this time *Robins* in possession.

1667. After Preclusion, Defendant *Cox* bought *Browning's* Interest.

1669, The Plaintiff brings a Bill to Redeem, and the Defendant pleads his Purchase, and the Equity of Redemption barred.

Qu. Whether *Browning* should have made the now Plaintiff Party to his Bill to preclude, and whether the Plaintiff ought not to be let in to Redeem.

Who to be made Parties to the Bill to preclude Redemption.

Lord Keeper, &c. declared the Case was to be judged by comparing them on both sides, and so to chuse the least mischief.

1. He said it was extream Mischievous for the Mortgagee to make all Parties that had Interest, for so every Mortgagee in case of often Mortgages was continually a Bailiff and his Work never at an end, for it might come to one, two, and three, &c. Mortgages.

2. He said he would be helped at last by having Principal, Interest and Charges.

But in the other Case, if the Plaintiff should not be relieved it would be irreparable Loss and Ruin, therefore thought Trouble and Pain, less than Ruin and total Loss; but declared the Account stated and Decree should bind, unless should prove great Collusion; and declared he would consider of a way to make Men take care to Redeem Mortgages, either by putting forth Rules.

Collusion.

1. That

The Law of Mortgages.

1. That Interest upon Interest should be allowed.

Mortgagees
Account upon
Oath to bind.

2. By taking away the Rule that Mortgagees should answer for what they should receive without their wilful default, and by ordering that the Mortgagees Account upon Oath should bind, unless disproved by Witnesses.

Roscarrick and Benton's Case, Ch. Cases 217.

Within what time a Mortgage is to be redeemed.

Now if a Man will redeem, he must come in time. Mr. *Totbill*, fo. 232. tells us, a Bill was Demurred to in 15 *Car. 1.* because it was to be relieved after 41 Years, but because there was a Promise that it should be redeemed after 27 Years, it was relieved.

Where the
Court would
not relieve a
Mortgage tho'
the Mortgagee
confest he was
satisfied.

In *Isham and Cole's Case*, the Court would not relieve a Mortgage of Thirty three Years elapse of Time, though the Mortgagee confest'd he was satisfied, as was proved by the Mouth of one Witness. 1 *Rep. in Ch. Cases* 128. And after that in *Clapham's Case* a Mortgage was not redeemed after Twenty Years Forfeiture; and the Estate descending to an Heir and he sell it, he pleads this, and the Plea held good.

In *Sanders and Hord's Case*, 12 *Car. 2.* the Plaintiff sought a Redemption of a Mortgage, as Heir and Administrator of the Mortgagor; the Defendant demurrs, for that he ought not to be troubled for any Matters in this Bill, in regard of the Antiquity of the Transactions, which were in 38 *Eliz.* and pleaded, That the Plaintiff had not made an Entry in Twenty Years, and is barred by the Statute

pute of 21 Jac. the Plaintiff claiming as Heir to his Father; and the Court allowed both the Plea and Demurrer. 1 Rep. Cha. Plea and Demurrer. Cases 184.

In the Case of *Hales versus Hales*, the Suit was to be relieved against an ancient Mortgage which had slept Sixty Years, and it appearing that the Defendant's Father died Forty Years since, and in all that time there was no Interest paid, or any demand at all upon the said Mortgage: The Court decreed, That the Plaintiff being a Purchaser from Sir *Edw. More*, who was the Mortgagor, and he and those under whom he claims had enjoyed it for Sixty Years last past, should hold the Premises, and that a *Vacat* be entered upon the Inrolment of the said Mortgage. Mortgage *Vacat*.

And much like this was the Case of *Sybson and Fletcher*. The Defendant had a Mortgage of the Lands of one *Briscoe*, 14 Jac. which Lands the Plaintiff since purchased, which Mortgage Money was payable Three Years after, and the said *Briscoe* hath had Possession of the said Lands ever since the making the said Deed of Mortgage till 21 Jac. at which time he sold to the Plaintiff, who was never interrupted till of late. Now for that the Defendant did not upon the Plaintiff's Purchase, though he saw the Possession altered from *Briscoe* to the Plaintiff, make any Claim to the Land, nor give any notice of his Mortgage, and the Defendant hath since purchased Land of *Briscoe*, and paid him Money, in all presumption this Mortgage Money is satisfied; and the Court decreed the Deed of Mortgage to be delivered up to be cancelled. 1 Rep. Chanc. 59.

Presumption by Circumstances, that nothing is due upon a sleeping Mortgage.

Now

Plead, or Demur.
murrer.

Mortgages not
to be relieved
after 20 years,
except in some
Cases.

Now it was the Opinion of the Lord Keeper and the Master of the Rolls in *Pearson and Pulley's Case*, 20 Car. 2. That Twenty Years was a fit time in which a Mortgage is redeemable, in imitation of the Statute of Limitations of Real Actions; and they directed, That when a Bill came to redeem an old Mortgage the Defendant should plead or demurr to it, that so the Judgment of the Court might be had upon it.

So in *Ventris* 340. *White and Ewer*. The Lord Keeper declared he would not relieve Mortgages after Twenty Years, except in Cases of Infants, Feme Coverts, &c. though these Matters in Equity are to be governed by the Course of the Court. But true it is that in some Cases, and as Circumstances are, Mortgages have been relieved after 30 Years, as where the Parties cannot get into Possession by reason of an Estate for Life, as was the Opinion of the Lord Keeper in *Roscarrick and Barton's Case*, Ch. Cases 220.

And here was the Case of *Cornall and Sykes*. *A. G.* the Plaintiff's Mother, whose Heir he is, being seised in Fee of Copyhold in Thirty five, she and her Husband Mortgaged the Lands to Dr. M. for 30 l. and for Nonpayment thereof the Premises were forfeited, and Dr. M. disposed of the Premises to *Joan* his Wife for Life, the Reversion to the Defendant *A.* and dies, and she not being able to redeem, the Plaintiff, her Son and Heir, brings his Bill to redeem. Defendant insisted that the Plaintiff ought not to redeem being so long since, and that the Defendant *M.* had conveyed the Premises to the Defendant *H.* The Court in respect of the Impediment in the Plaintiff's Mother to redeem during

The Law of Mortgages.

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during the Coverture, decreed the Plaintiff to redeem. *1 Rep. Ch. Cases 194*

Several useful Cases about Equity of Redemption.

Note, Power of Redemption is an Equitable Right inherent in the Lands, and binds all Parties in the *Post* or otherwise. But a Trust is created by the Contract of the Party, and he may direct it as he pleaseth; and therefore one that comes in in the *Post*, shall not be liable to it without express direction of the Party; and they are only bound by it who come in in privity of the Estate. *Hards 469.*

A Man makes a voluntary Deed, and then a Mortgage of the same Lands: The first Deed at a Tryal of Law is found fraudulent; he to whom the Deed was made exhibits a Bill to redeem the Mortgage. It was held that the first Deed was fraudulent, because voluntary, *quoad* the Mortgage-Money and *pro tanto*, yet that it was good as to the Equity of Redemption, and would pass that. *Ch. Cases 59. Rand and Cartwright.*

But voluntary Dispositions of Equity of Redemption are not to be favoured, as in case where the Plaintiff claims an Equity by way of Intail, which would make an Equity of Redemption perpetual.

A Decree to foreclose a Tenant in Tail shall bind his Issue in an Equity of Redemption, because that is a Right set up in a Court of Equity, and so may be here extinguished. *Ch. Cases 122.*

An Equity of Redemption is transferrable from one to another now, and yet at Common

The nature of a Power of Redemption.

Deed fraudulent.

Voluntary Deed to pass the Equity of Redemption.

Where Issue in Tail shall be bound in Equity of Redemption.

Redemption Transferred.
What will extinguish Equity of Redemption at Law.

mon Law if he that had the Equity made a Feoffment; or levied a Fine, he had extinguished his Equity at Law. *Idem* 219.

Equity of Redemption assignable and devisable.

An Equity of Redemption is now of so great Esteem in Law, that it is assignable and devisable, and an Occupant or a Tenant in Dower shall be liable to it. *Hards* 468.

Sir G. C. Mortgaged Lands, 28 *Cat.* 2. to *Jennings* for 2000 *l.* and died, and the Plaintiff being his Heir prays a Redemption. The Defendant insists; that the said Sir G. C. before the Mortgage borrowed of the Defendant 300 *l.* on Bond (*viz.*) in 1672. and that it was agreed also to be secured by the said Mortgage, but the Plaintiff is not willing to pay that, only will redeem the Mortgage. The Court decreed the Plaintiff to pay the Defendant both the 200 *l.* and the 300 *l.* and then the Plaintiff shall redeem. 2 *Rep. Chanc.* 247. *Whindan* and *Jennings*.

Person decreed to pay the Mortgage money, and also Money since borrowed on Bond.

It is agreed to be Practice of the Court of Chancery, That if the Mortgagee lends more Money upon the Mortgagor's Bond, he shall not Redeem without he pay off the Bond too.

A. Mortgage to *B.* Black-acre; which happens scarcely to be worth the Money lent upon it; and *A.* also Mortgage to *B.* White-acre, which is much better than the Mortgage-money. If he exhibits his Bill to redeem, he shall Redeem both or none. *Aliter* in Case of two Bonds.

Mortgagor if he redeem must pay all Costs.

Where the Mortgagee exhibits his Bill to compel the Mortgagor to redeem or foreclose him, if the Mortgagor redeem he must pay all Costs, but if he redeem not, the Mortgagee shall recover none.

Mortgage

Mortgage in Case of Infants.

Saile, Freezland, and others, Infants.

A Bill to Redeem a Mortgage made by the Father of the Defendants, or to foreclose. Defendants by Guardians answered, That their Grandfather was Seised in Fee, and made a Settlement whereby he Intailed the Estate, but with a Power of Revocation by any Writing published under his Hand and Seal in the presence of Three Witnesses. The Case was, He made his Will under his Hand and Seal, wherein he recited this Power, and declared he revoked the Settlement; but the Will had but Two Witnesses, which subscribed their Names, though a third was present, and died; the Lands descended to the Father who made the Mortgage, and the Defendants claimed by vertue of the Intail: The Decree was, That the Mortgage Money should be paid off.

1. There was an Execution of the Power in strictness, tho' the third Witness did not subscribe.

2. If there had not, yet Equity should help it in such little Circumstances, where the Owner of the Estate had declared his Intention.

There is a Difference where a Man hath power to make Leases, &c. which shall Charge and Incumber a third Persons Estate; such Powers are to have a rigid Construction; but
N where

where the Power is to dispose of ones own Estate, it ought to have all the favour imaginable.

And the Court in this Case would not decree the Infants to be foreclosed till they came of full Age (though sometime it is so done) because this Mortgage depended upon a disputable Title, and no Money could be expected by the Assignment of it over.
2 Ventr. 350.

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Equity of Redemption. Where Money received for the Equity of Redemption is no Assets in the Hands of the Heir, and why. In what Cases the Mortgage is irredeemable. Where no Relief against the Penalty of a Statute by Issue in Tail. Of Money lent upon the Credit of a former Security. Stat. 4 and 5 William and Mary. In what Cases the Mortgagor shall have no Equity of Redemption by that Statute. Who and in what Proportion shall contribute to an Equity of Redemption. Devise of Mortgaged Lands to B. for Life, remainder to C. Tenant for Life, to pay one the Third, he in remainder to pay three Thirds. A Jointress decreed to pay the Mortgage-money, and she and her Executors to hold over till repaid with Interest. Where tho' the Decree be Signed and Enrolled, yet the time for Redemption may be enlarged. A Decree to foreclose Tenant in Tail. Against whom Redemption lies. If there may be a Right or Equity of Redemption against the King. A Bill to Redeem lies against the Conusee of a Statute, who extends for Debt. Release of Equity of Redemption. Valuable Consideration, what. In a Bill for Discovery, the Mortgagee not compellable to make a Reconveyance of the Land. A Fine will not bar the Equity of Redemption. Release of Equity of Redemption as directed by a decretal Order in Chancery. A Bill to foreclose the Equity of Redemption.

ON a Bill in Chancery to be relieved against the Heir of the Mortgagor for Money received after his Father's Death for a Release of Equity of Redemption. *Finch Lord*

Where Money
received for E-
quity of Re-
demption no
Assets in the
Heir, and why.

Keeper conceived this is no Assets in Law; to satisfy a Judgment acknowledged by the Mortgagor after the Mortgage, and before the Release, being but a bare Right, and being not Assets in Law, the Release being before the Bill exhibited is no Fraud, and so not Assets in Equity. Decreed for the Defendant. 3 Keb. 307. *Freeman and Taylor.*

A Case like it.

Rolles Reports thus, The Father is Seised of Lands in Fee, and is indebted to divers Creditors, he Mortgage this Land to J. S. for Money paid, on Condition of Redemption, which is after Forfeited to the Mortgagee for Nonpayment; then the Father dies, and the Son and Heir, who is liable to Debt, joins with the Mortgagee in a Conveyance to another Purchaser, and this for Money given to the Heir, yet the Creditors of the Father shall not have any Remedy in Equity against the Son for the Money received by him for his joining of the Assurance, for that he had not in Law any Power of Redemption. 1 *Rolls Abr.* 580.

Debt by the Plaintiff as Administrator of *Tidbury* against the Defendant, Executor of another, *Hancock*, conditioned, if the Obliger pay 200*l.* by the first of *December*, 1634. that then the Surrendree *Hancock* the Testator should Reconvey on request. The Plaintiff alledged request 1644, to which the Defendant demurred, and *Per Cur'* the Surrender being absolute and Trust only for payment, there being no payment at the Day, the Mortgage is irredeemable. Judgment *pro Def.* 3 Keb. 786.

Where the
Mortgage is ir-
redeemable.

Hedworth

Hedworth and Primate. Trin. 18. Car. 2.

One acknowledgeth a Statute of 1500 *l.* for the payment of 800 *l.* with Interest, which being forfeited, and Lands extended upon it at an Annual value, the Conusor for a valuable Consideration settles the same Lands in Tail, and then borrows more Money of the same Conusee, and Articles were between them; whereby it is agreed, That this Statute and Extent shall stand for the Security of the borrowed Money: Conusor dies, and the Right of Entail descends upon the Plaintiff, and the Principal Money of 800 *l.* with Interest is satisfied by the perception of the Profits or otherwise. *Per Cur'*, the Plaintiff can have no Relief against the Penalty of the Statute, for both the Statute and the Settlement in Tail were for valuable Considerations, and the Money borrowed afterwards raiseth an Equity for the Conusee, and the Heir hath an Equity by reason of the Intail. Yet because the Conusee hath both Law and Equity on his side, and the Plaintiff hath only Equity till the Penalty of his Statute be satisfied; therefore the Plaintiff shall not be relieved till the Penalty be levied according to the extended Value, or by casual Profits, as Mines or Trees, &c. But they held further, That the Defendant should not be relieved here in Equity for any Money lent since the Settlement upon the Credit of his former Security, for then no Purchaser would be safe. In the Case between *Pool and Dudley*, and in this of *Hedworth and Primate*.

Where no Relief against the Penalty of a Statute by Issue in Tail.

Money lent upon the Credit of a former Security.

*Against whom Redemption lies.***Pawlet's Case.**

In this Case it was a great Question, Whether there may be a Right or Equity of Redemption against the King? The Case was, **Pawlet** Mortgaged Lands in Fee to **Ludlow** for 300*l*. and bound himself in a Statute and Recognisance to perform Covenants, and to pay the Money at a day. The day is past, the Money not paid, the Mortgagee by his Will devised all his Goods, Chattels, Debts and Personal Estate to his Executors. **Edward Ludlow**, Senior, and Heir of the Mortgagee, is Attainted of High-Treason, the King seiseth, and the Executor extends the Plaintiff's Lands upon the Recognisance, who thereupon exhibits his Bill against the King and the Executor, and suggests that he could not pay the Money at the Day and Place by reason of the Plague; and that afterwards the Mortgagee accepted the Interest, and waved the Forfeiture. It was held, That in natural Justice, Redemption of a Mortgage lies against the King, as well as there is Redemption against the Lord by Escheat (for so the King comes in here, and not *Jure Prerogativa*) but the King cannot be compelled to Convey. *Hardr.* 468, 469.

A Bill to Redeem lies against the Conusee of a Statute who extends for Debt.

A Bill to Redeem lies against the Conusee of a Statute, who extends for a Debt due from the Mortgagee, and against a Tenant in Dower. *Idem* 466.

One seised in Fee in Consideration of 1000*l.* paid to him by a Person that Married his Kinswoman, conveys to him and his Heirs, and takes a Redemise for Ninety nine Years if he should so long live, and Covenants therein, That if he should pay 1000*l.* (with Interest that should be then due) at any time during his Life, that the Grantee should Reconvey to him and his Heirs, and that if he did not pay the Money, his Heirs should have no Power of Redemption. He died, the Money not being paid, the Heir preferred a Bill to Redeem it. It was urged for him, That in a Conveyance which was a Security for Money whatever Covenant there is to exclude Redemption, such Covenant would not be regarded in this Court, and that the Person to whom the Conveyance was made might have had a Bill in the Life time of him that conveyed, to have a time set for the payment of the Money, or to be foreclosed. But the Lord Keeper dismiss'd the Bill. In a Common Mortgage he said such Covenant is not regarded, but this was made with an Intention of Settlement of his Estate, beside the Consideration of the Money paid, and he denied he should have been limited to any time for the Payment of the Money by Decree here, for this Court cannot shorten the Time that is given by express Covenant and Agreement of the Parties, but when that time is past, then the practice is to foreclose. 2 *Ventr.* 364. *Bonham and Newcomb.*

Release of Equity of Redemption.

Valuable Con-
sideration.

Bill for Discov-
ery.

Mortgagor Articles with a Stranger for the Sale of the Lands Mortgaged, and receives 50 *l.* of the Money, and afterwards the Mortgagor releaseth to the Mortgagee the Condition and Power of Redemption, and pending a Bill against himself and the Mortgagee for a Discovery and Performance, &c. Releaseth to the Mortgagee all his Right in and to the Lands; but no Money or valuable Consideration appears to be given for either of these Releases. The Court held, That neither of these Releases ought to obstruct the Conveyance to the Purchaser by the Mortgagor, because they were given without valuable Consideration, and one of them hanging the Suit, and both the Releases ought to be set aside as to the Plaintiff: But because the Bill prays only a Discovery, the Mortgagee is not compellable by this Bill to make a Conveyance for Payment of Money and Interest. *Hardr. 320. Hill. Term, Worsely and Raxson.*

Mortgages Forfeited and Released, yet to pay the full value or reassured the Land. *Tot. 232.*

A Fine will not Bar an Equity of Redemption. *Hardr. 512.*



Stat. 4 and 5 W. and M. Cap. 16.

In what Cases
the Mortgagor
shall have no
Equity of Re-
demption.

If any Person shall borrow any Money, or for any other valuable Consideration for the Payment thereof, shall acknowledge or suffer a Judgment, Statute or Recognizance to be entred against them, and shall afterwards borrow

borrow any other Sum of any other Persons, or for other valuable Consideration, and for securing the repayment or discharge thereof, shall Mortgage Lands to the second, or other Lender or Lenders, or to any other Persons in Trust for him or them, and shall not give notice to the Mortgagee of such Judgment, Statute or Recognizance in Writing, before the execution of the said Mortgage, unless such Mortgagor or his Heirs upon notice given by the Mortgagee in Writing under Hand and Seal, attested by two or more Witnesses of such former Judgment, &c. shall within six Months pay off and discharge the same, and cause the same to be vacated or discharged by Record, such Mortgagor shall have no benefit in Equity for Redemption of the Lands mortgaged. If any Person who hath or shall once Mortgage Lands for security of Money, or for other valuable Considerations, shall again Mortgage the same Lands, or any part thereof to any other Person (the former Mortgage being in force) and shall not discover to the second Mortgagee, the first Mortgage in Writing, such Mortgagor shall have no Relief or Equity of Redemption against the second Mortgagee.

But such second or other Mortgagees may redeem any former Mortgage.

This Act extends not to bar the Widow of any Mortgagor from her Dower, who did not legally joyn with her Husband in such a Mortgage, or otherwise lawfully exclude herself.

Who,

Who, and in what proportions shall contribute to a Redemption.

A. seised in Fee, deviseth to his Heir on Condition, that he pay to the Daughter of A. 500 l. at her Age of 16 Years, and on default that she should enter and raise it. The Heir deviseth it to his Mother for Life, and afterwards to his Brother in Fee and Dies, the Mother enters the Daughter under Age, and the Brother having the Reversion and Inheritance exhibits his Bill to have his Mother to pay a part of the 500 l. and so it was ordered. So where A. had Mortgaged the Manor of G. for 2500 l. and then deviseth to B. for Life, the remainder to C. in Fee. C. preferred his Bill to force B. to pay his share of the Mortgage Money; and so it was decreed that he should. *Cb. Cases 223. Heyne's Case.*

Devise of Mortgaged Lands to B. for Life, remainder to W. C. in Fee.

Tenant for Life to pay one third, Remainder to pay two thirds.

It was decreed in *Cornish and Mewe's Case, Hill. 27. and 28 Car. 2.* That the Tenant for Life should pay one third, and he in Remainder two thirds to redeem.

The Widow who had an Estate for Life, and the Infant Heir decreed to pay off a Mortgage on the Estate, (*viz.*) the Widow to be rated at one third, and the Reversion in Fee to the Infant at two thirds, 1 *Rept. in Cb. 218. Rowell and Whaley's Case.*

Jointress decreed to pay Mortgage Money, &c.

A Joyntriss was of Lands mortgaged, and it was decreed in *Bertue and Stile's Case,* That the Joyntriss paying the Mortgage, she should hold over till she and her Executors should be repaid with Interest. *Cb. Cases 271.*

Fore-

Foreclosing Equity of Redemption.

There was a Decree to Foreclose (the Money not being paid) yet the Court in Cases of inevitable necessity will enlarge the time, though the Decree be signed and inrolled; as was the Case of *Cocker, Son and Heir of Edw. Ludlow* a Colonel in the Kings Army, and forced to leave the Kingdom; and for that Reason the time was enlarged, especially if it be by matter subsequent to the Decree. *1 Ch. Rept. 25. Inscord and Claypool's Case. 1 Ch. Rept. 262.*

Where though a Decree be signed and inrolled, yet the time may be enlarged.

A Decree to Foreclose Tenant in Tail from redeeming concludes his Issue, and the Remainder, because that is a Right set up only in a Court of Equity, and may be here extinguished. *Ch. Cases 320.*

A Decree to Foreclose Tenant in Tail.

Agreement about the Release of an Equity of Redemption and Pleadings.

A Sumpsit, and Declares: Whereas the 19th. Day of January 1693. The Defendant had and held of the Plaintiff two Closes in H. by way of Mortgage. And whereas *postea*, (*viz.*) the said Day and Year at, &c. there was a Colloquium between the said Defendant and Plaintiff, of and concerning the aforesaid Mortgage, and the releasing the Equity of Redemption of the Plaintiff thereto, and also of, and concerning a certain Sum of Money were due and owing from the Plaintiff to the said Defendant. And the Plaintiff agreed to make to the Defendant a good and sufficient

Narration upon mutual promises of Agreement, that the Plaintiff agrees to release the Equity of Redemption, in consideration whereof the Plaintiff assumes to pay 7 l.

sufficient Release of his Equity of Redemption to the Defendant, in consideration whereof the Defendant then and there agreed to give and pay to the Plaintiff 7 l. over and above the Money which were due to the Defendant upon the said Mortgage, and to deliver him the Plaintiff one Sack of Barly, and to acquit him, of and from all Money which the Plaintiff owed to the Defendant, as aforesaid, and the said Defendant *postea scilicet eisdem die & Anno apud, &c.* in Consideratione Agreementi præd. and also in Consideration that the Plaintiff, then and there had promised to perform all things in the said Agreement on his part to be performed, did promise to the Plaintiff, that he the said Defendant would perform all things in the said Agreement to be performed on his part. And the Plaintiff avers performance of all, generally on his part; and though the Defendant in pursuance of the said Agreement had paid the Plaintiff 25 s. in part, of the said 7 l. yet had not paid the 5 l. 11 s. residue, nor delivered the Sack of Barly, nor acquitted him the Plaintiff of the Moneys aforesaid, to the Defendant due as aforesaid: Then he declares on *Indeb. Assumpsit* for 5 l. 15 s. for the Release of the Equity of Redemption, and lays it on the 29th. of Dec. in the same Year last mentioned. The Defendant pleads in Bar of the first Promise *actio non*. That *post confectio promiss' ill' (viz.) 29 die Julij 1694.* by a certain Indenture bearing date the Day and Year last mentioned, the Plaintiff released to him all Actions, Suits, &c. a general Release, which was contained in the Release of the Equity of Redemption, and as to the

the other Promise *actio non*, because that Promise was made before the said 29th. of July, 1694. viz. The 1 Day of July in the same Year, and further saith, That the said 29th. Day of July, 1694. pleads the same Release by which the Plaintiff had released his Equity of Redemption; *absque hoc qd post confectiō Indenturæ præd' ipse idem Defend' Assumpsit super se prout per eadem premisi præd' superius supponitur & hoc paratus, &c.* And the Plaintiff demands Oyer of the Indenture, *Et ei Legitur in hæc verba.* This Indenture made the 29th. Day of July, &c. Anno Dom. 1694. Between R. T. (the Defendant) of, &c. of the one part, and J. T. (the Plaintiff) of the other part: Whereas the said J. T. hath formerly by certain Deeds, Writings and Surrenders, conveyed and surrendered by way of Mortgage, and given up with a Straw into the Hands of the Lord of the Manor of *Wakefield*, called or known by the name of, &c. now in the tenure of, &c. being of the yearly Rent, &c. to the Lord of the said Manor 8 *d.* and compounded for the use and behoof of R. T. and of his Heirs and Assigns for ever. And whereas likewise the said J. T. hath also formerly by certain Deeds, Writings and Surrenders, conveyed and surrendered by way of Mortgage all that his capital Messuage, &c. to the use of T. H. his Heirs and Assigns for ever: Now this Indenture witnesseth, That the said J. T. hath released to the said R. T. and T. H. and their Heirs, all Provisos and Conditions in the said Deeds, Writings and Surrenders, mentioned and contained, as in and by the said Deeds, Writings and Surrenders, relation being thereunto had, may more

Bar by the same release by which the Plaintiff had released the Equity of Redemption.

Oyer of the release of the Equity of Redemption.

more fully and at large appear. And also doth, now by these Presents for ever acquit and release all his Estate and Right both in Law and Equity of Redemption, Title, Claim and Demand whatsoever, to the said Lands, Messuage, and all and singular the Premises, and every of them, and that he the said J. T. doth by these Presents, remise, release and for ever quit, claim unto R. T. and T. H. aforesaid, their Heirs, Executors, Administrators and Assigns, all and all manner of Actions, Suits, Causes and Accounts, Debts, Duties, Reckonings, Sum and Sums of Money and Demands whatsoever, which he the said J. T. ever had, or which his Heirs, Executors, Administrators or Assigns, or any of them in time to come, can or may have, to, for or against the said R. T. and T. H. their Executors, Administrators or Assigns, for or by reason of any matter, cause or thing whatsoever. In witness, &c.

The Question was, Whether by this Release the Action is released. *Per Cur.* The Release was a consideration precedent of the Promise, and the ground and foundation of the Action, and until this was done the Plaintiff had no cause of Action vested in him; and for that also, it was not the intent of the Parties, that the Release should be a discharge of the Duty which was to be created by it: And the Case of *Potter and Phillips* 218. 2 Cr. 627. was cited. A Writ of Error was brought, and the Judgment given in the *Common Pleas* was affirmed, That the Defendants promise is not released. It was urged at the Bar, That if the Plaintiff might have an Action upon the Defendants promise before the making of the Release, that

that then the Release should be a bar to the Plaintiff; and this consequence was agreed if it should be so; but in this case the Plaintiff might not have an Action before the Release made; for the Release of the Equity of Redemption, is that which intitles the Plaintiff to his Action for the 7 l. It was urged further to prove, that the Plaintiff might have an Action before the making of the Release, that they are mutual Promises, and in such a case there need not be alledged performance on the Plaintiffs part. This was agreed to be generally true, but then it depends on the words of the Agreement, whether it shall be so or not; and certainly one may make the Agreement so, that one shall not be obliged to part with his Money until he had a Consideration for it. And in this case the Agreement is, That the Plaintiff shall release the Equity of Redemption, in consideration of which the Defendant is to pay 7 l. so that the making of the Release is a Condition precedent to the payment of the Money. 1 Lut. 245. *Thorp and Thorp's Case.*

A Release of Equity of Redemption, as directed by a Decretal Order in Chancery.

THIS Indenture made the, &c. between A. B. of, &c. Esq; Son and Heir of Sir A. B. late of, &c. Kt. deceased, of the one part, and C. D. of, &c. Gent. of the other part: Whereas by Indenture bearing date, &c. made between the said Sir A. B. by the name of, &c. of the one part, and the said C. D. by the name of C. D. of, &c. of the

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the other part, the said Sir A. B. for the Considerations therein mentioned, did Grant, Demise, Bargain and Sell unto the said C. D. all that Messuage, &c. (recite *prout* in the Indenture) and all and singular Ways, Waters, Water-courses, Common of Pastures, Woods, Under-woods, Hereditaments, Profits, Easements and Appurtenances whatsoever, unto the said above mentioned to be demised Premises, or any part thereof belonging, or in any wise appertaining, or therewith used, occupied or enjoyed, reputed or taken as part, parcel or member thereof, or of any part thereof, and the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits, of all and singular the said above mentioned to be demised Premises, and of every part and parcel thereof, and all Rents and other Profits reserved or from henceforth payable, for and upon any Lease or Leases thereof, or of any part thereof, and all the Estate, Right, Title, Interest, Use, Property, Claim and Demand whatsoever, either in Law or Equity of him the said Sir A. B. of, in and to all or any of the said Premises, or of, in or to any part or parcel thereof, with their and every of their Appurtenances. To have and to hold, all and singular the above mentioned to be demised Messuage, &c. with their and every of their Appurtenances, and the Reversion and Reversions thereof unto the said C. D. his Executors, Administrators and Assigns, from the day next before the day of the date of the said Indenture, for and during, and unto the full end and term of 99 Years, from thence next ensuing, and fully to be compleat and ended without Impeach-

Impeachment, of or for any manner of Waste, at and under the yearly Rent of one *Pepper-Corn*, payable at the Feast of St. *John the Baptist*, if the same shall be lawfully demanded, in which said Indenture of Demise is contained a Proviso or Condition, Nevertheless, that if the said Sir A. B. his Heirs, Executors or Administrators, or any of them should pay or cause to be paid unto the said C. D. his Executors, Administrators or Assigns, the Sum of, &c. of lawful Money of *England*, together with lawful Interest for the same, at the days and times in the said Indenture mentioned, that then the said Indenture should be void, as in and by the said Indenture of Demise, Relation, &c. and whereas the said Sum of, &c. nor any part thereof, or any Interest for the same was paid, at the times in the said Proviso limited and appointed for the payment thereof, nor at any time since, whereby the Estate granted to the said C. D. in the said Premises became absolute, and he received Judgment at Law, and was put into the Possession thereof, by the Sheriff of the said County of, &c. by virtue of an Execution upon the said Judgment. And whereas by a Decree or Decretal Order made in a certain Cause depending in the High Court of *Chancery*, between the said C. D. Complainant and the said A. B. Defendant, bearing date, &c. It was ordered and decreed, that upon the said A. B.'s payment of what, &c. one of the Masters of the said Court should certifie to be due to the said C. D. for Principal, Interest, and Costs, by the first day of the then next Term, the said C. D. should convey the said mortgaged Premises to the said A. B.

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or to such Person or Persons as he should appoint, free of all Incumbrances committed or done by him, or any Person or Persons claiming by, from or under him; but in default of the said A. B.'s payment, of what the said Master should certify to be due to the said C. D. as aforesaid, then it was ordered and decreed, that the said A. B. should be absolutely foreclosed and debarred from all Equity of Redemption, and deliver upon Oath all Deeds and Writings that he had or could come by that related to the Premises, and convey all the Right, Title and Interest, which he had in the Premises unto the said C. D. in such manner as the said Master should direct. And whereas the said Master in pursuance of the said Order made his Report bearing date, &c. last past, whereby he certified due to the said C. D. the Sum of, &c. for principal Interest and Cost, and appointed the said A. B. to pay the same to him on the day last past; as by the said Decree or Decretal Order and Report, relation being thereunto had, more at large appeareth. And whereas the said A. B. hath not paid the said, &c. nor any part thereof, according to the said Order and Report, || Now this Indenture witnesseth, that the said A. B. in obedience, to and in pursuance of the said Decree, and for, and in consideration of the Sum of 5*s.* of lawful Money of *England*, to him in hand paid by the said C. D. the Receipt whereof he doth hereby acknowledge, hath granted, released and confirmed, and by these Presents doth Grant, Release and Confirm unto the said C. D. his Executors, Administrators and Assigns, the said Messuage, &c. with their

their and every of their Rights, Members and Appurtenances, and the Reversion and Reversions, Remainder and Remainders thereof, and also all the Estate, Right, Title and Interest both in Law and Equity of the said A. B. in, to and out of the same, and every part and parcel thereof, together with all Deeds, Evidences and Writings touching and concerning the same Premises only, and true Copies of all such Deeds and Evidences as concern the same jointly, or together with any other Lands and Tenements, To have and to hold the said Messuage, &c. and all and singular other the Premises hereby granted and released, or meant, mentioned or intended to be hereby granted and released unto the said C. D. his Executors, Administrators and Assigns for and during all the rest, residue and remainder of the said Term of Ninety nine Years yet to come and unexpired absolutely foreclosed, and debarred of and from the Proviso of Redemption in the said recited Indenture mentioned, and from all Benefit and Equity of Redemption whatsoever.

With a Covenant for further Assurance;

A Bill to foreclose the Equity of Redemption.

Mortgage in Fee to Trustees for the Mortgagees, and as a further Security the same assigned to the Mortgagees for 1000 Years. Trustees, Mortgagees and Mortgagor by Bargain and Sale in Fee, and by Assignment of the 1000 Years Convey the same to and in Trust for the Plaintiff. The Defendant borrows 50l. of the Plaintiff on the same Security.

To the Right Honorable, &c.

Mortgage in
Fee.

Humbly complaining, &c. Your Orator A. B. of, &c. That J. L. of, &c. having occasion for the Sum of 200*l.* of lawful Money of *England*, did upon or about, &c. apply himself unto I. C. of, &c. and W. I. of, &c. and desire to borrow the said Sum of 200*l.* of the said I. C. and W. I. and did also affirm, That he the said J. L. was lawfully seised in his Demesne as of Fee or some other good Estate of and in those several Messuages or Tenements herein after mentioned, and did propose to Mortgage the same to the said I. C. and W. I. as a Security for the Repayment of the said 200*l.* and Interest, if they would lend him the same. And accordingly there was on or before the 10th day of, &c. paid by the said I. C. and W. I. or their Order, to the said J. L. the Sum of 200*l.* of lawful Money of *England*, and thereupon and for the securing the Repayment of the same with Interest, and in Consideration of the same the said I. C. did in and by certain Indentures of Lease and Release, bearing date the 4th and 5th day of *M.* in the Year, &c.

&c. Bargain and Sell, Release and Confirm unto R. R. of, &c. and H. N. of, &c. all those two Messuages or Tenements, with the Appurtenances, situate and being, &c. and all the Estate, Right, Title, Interest, Claim, Property and Demand whatsoever, either in Law or Equity, of him the said J. L. of, in and to the said Premisses, and the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits thereof, To hold unto the said R. R. and H. N. their Heirs and Assigns for ever, in Trust nevertheless to and for the use of the said I. C. and W. I. their Heirs and Assigns, or to the like Effect as in and by the said several Indentures of Lease and Release, relation being thereunto had, may more fully appear. And the said J. L. thereupon and for the further Security of the Repayment of the said 200 l. with Interest and Consideration for the same in and by his certain Indenture of Assignment, bearing date, &c. did Grant, Assign and Set over unto the said I. C. and W. I. all and singular the aforesaid Messuages or Tenements, with their Appurtenances, and all his Estate, Right, Title, Interest and Term of Years therein, To hold unto the said I. C. and W. I. their Executors and Assigns for the remainder of a Term of 1000 Years commencing from the, &c. as by the said mentioned Indenture relation being thereunto had, may more fully appear, which said several Conveyances and Assurances, Bargain, Sale and Assignment of the Premisses were, in and by Indentures bearing date the said, &c. declared by the said I. C. and W. I. to be only a Security for the Repayment of the said 200 l. with Interest, and Consideration for the same, and in

To Trustees.

And a Term of 1000 Years to the *Gestuy que Trust*, as a further Security for the Repayment.

Proviso.

and by the said Indenture the said I. C. and W. I. did Covenant and Agree to and with the said J. L. his Heirs and Assigns, That if he the said J. L. his Heirs, Executors or Assigns, did and should well and truly pay or cause to be paid unto the said I. C. and W. I. their Executors, Administrators or Assigns, the full Sum of, &c. at such and such times (*prout* in the Deed) then the said above mentioned Indentures of Assignment, and Bargain and Sale of the Premises aforesaid, made by the said J. I. unto the said I. C. W. I. B. B. and H. N. and the Estate and Interest thereby granted and made should be null and void, And in by the said last mentioned Indenture the said J. L. did Covenant well and truly to pay or cause to be paid unto the said I. C. and W. I. the said Sum of 212*l.* upon the Days and Times therein before limited and appointed for the Payment thereof, according to the Agreement aforesaid, as by the one part of the Indenture of Defeasance under the Hand and Seal of the said J. L. relation being thereunto had may more at large appear. And your Orator further sheweth, That the said I. C. and W. I. having urgent occasion for their Money so as aforesaid lent unto the said J. L. and calling in the same, and the said J. L. having occasion for the Sum of 350*l.* of lawful, &c. to discharge the aforesaid Mortgage and for his further Occasions, did on or about the Month of, &c. apply himself unto your Orator, and desire to borrow that Sum of your Orator, and did also affirm unto your Orator that he was lawfully Seised in his Demense as of Fee, or some other good Estate of and in the aforesaid Premises, and did propose to Mortgage the

A further Sum taken up of another, and the first Mortgagees paid off, but the Mortgage continued.

the same unto your said Orator as a Security for the Repayment of the said Sum of 350*l.* and Interest, if he would lend him the same, and accordingly there was on or before the 19th day of, &c. paid by your Orator or his Order to the said J. L. and his Order the Sum of 350*l.* that is to say, to the said I. C. and W. I. the Sum of 200*l.* and to the said J. L. the Sum of 150*l.* and thereupon and for the securing the Repayment of the said 350*l.* with Interest and Consideration for the same, in and by certain Indentures of Lease and Release, bearing date the 18th and 19th days of, &c. the said B. B. and H. N. by the direction and Appointment of the said I. C. and W. I. and also of the said J. L. by the direction and appointment of your Orator, did Bargain, Sell, Release and Confirm unto H. N. of, &c. and P. K. of, &c. all the aforementioned Messuages and Tenements, with their Appurtenances, and all the Estate, Right, Title, Interest, Property, Claim and Demand whatsoever, either in Law or Equity of them the said B. B. H. N. and I. T. of, in and to the said Premisses, and the Reversion and Reversions, Remainder and Remainders, Rents, Issues and Profits thereof, unto the said H. N. and P. K. their Heirs and Assigns for ever in Trust nevertheless to and for the use of your said Orator, his Heirs and Assigns, or to the like effect as by the said several Indentures of Lease and Release last mentioned, relation being thereunto had may more fully appear. And for the further securing the Repayment of, &c. with Interest, the said I. C. and W. I. by the direction and appointment of the said J. L. and also the said J. L. in Consideration of the afore-

And Security
by the Premis-
ses.

O 4

said

The Law of Mortgages.

said respective Sums of Money to them respectively paid in and by their certain Indenture of Assignment, bearing date, &c. did Grant, Assign and Set over to your Orator, All, &c. and all their Estate, Right, Title, Interest and Term of Years therein, To hold unto your Orator, his Executors, &c. for the remainder of the said Term of 1000 Years : And in and by the said last mentioned Indenture it is provided and declared, That if the said J. L. (*Here insert the Covenant in the Assignment for the Payment of the Money.*) And in and by the said Indenture the said J. L. did Covenant with your said Orator (*Here insert the Mortgagor's Covenant for Payment*) as in and by the said last mentioned Indenture, relation being thereunto had, may more fully appear. And your Orator further sheweth, That the said J. L. by his Bond or Obligation, dated, &c. became bound unto your said Orator in the penal Sum of 700 l. on Condition for Payment of 371 l. at, &c. as by the said Bond or Obligation, with the Condition thereunto written, relation, &c. And your Orator further sheweth, That the said J. L. having occasion for the further Sum of 50 l. did on or about, &c. apply himself unto your Orator, and desired to borrow that further Sum of your Orator, and proposed to secure the Repayment thereof with Interest upon the aforesaid Premises ; and accordingly there was on or before the, &c. day of, &c. paid by your Orator or his Order to the said J. L. the further Sum of 50 l. and thereupon and for securing the Repayment thereof with Interest, and by a certain Writing bearing date, &c. the said J. L. did thereby Covenant and Agree to aid with your Orator, That the said

Plaintiff lent
the Mortgagor
750 l. on Bond.

And the Pre-
misses to stand
as a Security.

said Premises should remain and be a security unto your Orator for securing the Repayment as well of the said 50*l.* and Interest, as of the aforesaid 350*l.* and Interest, before any Equity of Redemption should be sued for or had by the said J. L. his Executors, Administrators or Assigns, and that he the said J. L. his Executors, &c. (*Here recite the Covenant for Payment*) as in and by the said Writing, &c. And your Orator further sheweth, That the said J. L. hath neglected to pay the said Debt, so that the Principal Sum of 400*l.* and all Interest for the same remain due and unpaid to your Orator, whereby the said Mortgaged Premises are become forfeited, and the Estate and Interest of your Orator and his said Trustees respectively in the Premises are become absolute, and unless your Orator may forthwith be paid his Principal, Interest and Costs, the Premises ought to be held by your Orator and his Trustees, according to their respective Estates therein, fully barred and foreclosed of and from all manner of Equity and Benefit of Redemption by the said J. L. his Heirs and Assigns. But now so it is, may it please your Lordship, That the said J. L. designing to defraud your Orator of his said just Debt, *Suggestion* or at leastwise by delaying the payment thereof to induce your Orator to accept of some Composition for the said Debt, gives out in Speeches and Pretences that the same Mortgaged Premises are liable to some prior Incumbrances, but refuseth to discover what the same are; whereas in Truth if the said Mortgaged Premises, or any part thereof, were at any time heretofore charged with, or any way made liable to any Incumbrances precedent to the said Conveyances and Assignments

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signments, so made as aforesaid unto your Orator, and his said Trustees respectively, the same have been long since paid off and satisfied, or otherwise discharged, or at leastwise the said I. L. ought to satisfy and discharge the same, that your Orator and his said Trustees may be enabled to hold and enjoy the Premises, free from Incumbrances according to the Covenants and Agreements in the said Mortgages and Assignments contained, and sometimes the said I. L. pretends, that if your Orator should enter upon the Premises and receive the Profits thereof, that he will at his own leisure call your Orator to an account for the same, and afterwards redeem the same, when the said Debt shall be satisfied out of the Rents and Profits, so that your Orator shall be enforced to become an Accountant to the said I. L. and shall not be able to sell the said mortgaged Premises, for satisfying the Money due to your Orator, And altho' your Orator hath in a friendly manner requested the said I. L. to pay him the said 400 l. principal and interest, and offered that upon payment thereof, that both he and his Trustees shall, and will reconvey the said mortgaged Premises to the said I. L. and his Heirs, &c. nevertheless the said I. L. designing to defraud your Orator, or at least to make him uneasy under the said Mortgage, doth wholly refuse to pay the said Debt, or to discover what Incumbrances the Premises are liable unto, whereby your Orator is greatly in danger to lose his said Debt, or at least to be put to very great Charges and Difficulties; In tender consideration whereof, and for that your Orator hath no way or means to obtain an absolute Estate in the said Premises, fore-

closed

closed of all Equity of Redemption, without the Aid of this Honourable Court, nor discover what Incumbrances the same are liable unto, but by a Confession thereof upon the Oath of the said J. L. your Orator's witnesses, &c. To the end therefore the said J. L. may true answer make unto all and singular the Premises, and may set forth and discover whether he did not execute such Conveyances as aforesaid, for securing the said Sum of 200*l.* and Interest unto the said I. C. and W. I. in manner as aforesaid; and whether he did not afterwards borrow of your Orator the said several Principal Sums of 330*l.* and 50*l.* and whether the Premises were not Conveyed and Assigned to your Orator and his Trustees in such several and respective manner, and under such Proviso's and Conditions of Redemption as herein before is set forth; and whether the said several Principal Sums and Interest are not still remaining due and unpaid; and whether any or what part hath been paid to your Orator, and when and by whom; and whether the Premises or any or what part thereof are liable to any Incumbrances; and may shew Cause, if he can, why he doth not pay the said Principal Money and Interest to your Orator, upon payment thereof your Orator being ready for himself, and to procure his Trustees to make such Reconveyance of the Premises as shall be thought reasonable; and that in default of Payment thereof, that the said J. L. may be absolutely barred and foreclosed by Decree of this Honourable Court of and from all Equity and Benefit of Redemption of the Premises, and that your Orator may be relieved in all and singular the Premises, &c.

C A P.

C A P. XV.

Select Cases of Pledge. When no time is appointed for the Redemption, whether the Money may be tendered after the Death of him who pledged it. Diversity between a Mortgage and a Pledge. Where a Custody only and no Interest. Of tender and refusal. What property be that pawneth the Goods hath till Redemption or Forfeiture. Goods not forfeitable for any offence of the Party that hath them in Pawn. Goods pawned, and no time set for the Redemption. Bona peritura pawned are stolen. What shall be necessarily intended in a Declaration.

SIR John Ratcliff was posselt of an Hatband set with Pearls and Diamonds, and pawned it to John Whitlock for 25 l. but no certain time appointed for the Redemption thereof. Whitlock being sick, his Wife in his presence, and with his assent delivered it to the Defendant Davies, and afterwards he made his said Wife Executrix and died, who proved the Will. The Plaintiff tendered to the Executrix the 25 l. who refused, and afterwards demanded the Hatband of the Defendant, who refused to deliver it, but converted it to his own Use.

When no time is appointed for the Redemption, whether the Money may be tendered after the Death of him who pledged it.

It was resolved in this Case. 1. There being no time appointed for the Redemption; yet it may be well made after the Death of him to whom it was pledged, but not after the Death of him who pledged it; for pledging doth not make an absolute Property (though Mortgage of Land doth) but is a delivery

delivery only till he pays : So it is a Debt due unto the one, and a retainer of the thing to the other, for the which there may be a redemand at any time upon the payment of the Money ; for the Pledge delivered is but as a Security for the Money lent, so as he who borrows the Money is to have again his Pledge when he repays it, and his tender gives him Interest therein.

Diversity between a Mortgage and a Pledge.

2. It was resolved, That by this delivery of the said Goods by the Feme, with the assent of her Husband to the Defendant, there passeth no Interest in them to the Defendant, but (as it were) a custody only and therefore the Tender of the Redemption ought to be made to the Executrix only, and not to the Defendant.

Custody only and no Interest.

3. That when he tendered the Money to the Executrix and she refused, it was as good as payment ; and the special Property of the Goods is revested in the Plaintiff: Then when he demanded them of the Defendant, and he refused to deliver them, Trover well lies although he came to them by a lawful delivery. Judgment *pro Quer. Cr. Jac. 244, 245. Sir John Ratcliff against Davies, Tel. 178. 1 Bufr. 29.*

Tender and Refusal.

Pledges or Pawns are { in Deed,
in Law.

As when a Chattel personal is pawned for Money, that is a Pledge in deed. A Pledge in Law is said to be where one puts a Garment to a Taylor to make, when he hath made it he may keep it till he be paid for the making of it, but he cannot sell or use it. So an Hosteler

Hosteler may keep an Horse, and by the Custom of *London* he may sell him and keep the Money.

What property
he that pawn-
eth hath till
Redemption or
Forfeiture.

Not forfeitable
by the Party
that hath them
in Pawn.

He that pawneth the Goods till the day of Redemption or Forfeiture, hath such a general property in them, as if in this time they be casually lost, he must abide by the loss, and they cannot be forfeited by the Party that hath them in Pawn for any offence of his, nor may they be taken in Execution or Attached for his Debt. *Owen* 124. *vide Plus ibid.*

If one Pledge Goods for Money, and no time is set for the Redemption, it may be redeemed after the Death of him to whom it is pledged, but not after the Death of him that pledged it. *Vide supra, Cr. Jac. 224, 225.*

Goods pawned
and no time
set for the Re-
demption.
Pawn of Goods
bona peritura.

Where Goods are pawned and no time set, they are redeemable at any time during the Life of the Pawner.

Where Goods are pawned and no time set, and the Goods be perishing, and the Pawner lets them lie till they are spoiled; as Corn, Oyl, &c. and there is no default in him that hath them in keeping; the Party that pledged shall suffer the loss of them; and he to whom they were pledged, may have Debt for his Money. 4 *Rep.* 38. 1 *Inst.* 89. *Yelw.* 178.

If Goods pawn-
ed are Stollen.

If Goods pawned are Stollen, the Party to whom, &c. shall not answer. *Vide* 1 *Inst.* 89. 4 *Rep.* 32. 38.

May have Ac-
tion of Tres-
pass.

The Party that Pawns the Goods till the day of Redemption or Forfeiture, hath such a general property in them, that as if they are casually lost, he must abide by the loss. He that hath them in Pawn, hath a special property

property in them, as to milk a Cow, work an Horse, but not to abuse them, so if the Goods are taken away from him.

Assumpsit : Whereas T. Lord B. 1 April, 39 Eliz. was possessor of an Abiliment of Gold, &c. *ad valentiam* 100 l. and pledged and delivered them the same day and year to the Plaintiff for 400 l. And whereas the said Lord B. was indebted to the Plaintiff, 25 l. for Silver Plate which he sold and delivered to the Lady F. Wife of the said Lord B. and that he being so indebted died; that the Defendant the 9 of May, 40 Eliz. in consideration the Plaintiff would at the Defendants request deliver to the said Lady B. being a Widow the said Goods and Chattel, *ad tunc existen⁹ ad valentiam* 500 l. pledged unto him *ut presertur* for 403 l. 6 s. 8 d. by the Defendant to be paid, promised, that he would pay to the Plaintiff the 25 l. when he should be requested, and alledged *in facto*, that he did on the said 9 of May, 40 Eliz. at the Defendants request upon the payment of the said 403 l. 6 s. 8 d. deliver to the said Lady B. the said Goods and Chattels so pledged to him, and that the Defendant *licet* such a Day he was requested had not paid the said 25 l. And Verdict *pro Quer.* It was moved in Arrest of Judgment.

1. That the Consideration was not good, because the Declaration is in regard that the Lord B. was indebted to him 25 l. for Plate sold and delivered to his Wife to his use : What shall be But it is not averred, that the Baron agreed necessarily intended in a thereto, or that it came to his use, *sed non* Declaration. *allocat⁹*, for it shall necessarily be intended.

2. The Declaration is not good, because it is not averred, that they were of the value of

of 500 l. at the time of the delivery of them to the Lady B. for that is the principal part of the Consideration, *sed non allocatur*, for being delivered the same Day of the Assumpsit, they shall be intended to be of the same value.

3. The pledging being for 40 l. and the Goods alledged to be of the value of 500 l. the delivery of them for 403 l. was held to be a good Consideration. *Cr. Jac. 257. Beerblock and Mitchel's Case.*

Mortgaged Goods, if they are not redeemed shall not be forfeited by Outlawry, and if Money be tendred to redeem them, and a refusal to deliver them, this hath been adjudged a Conversion. *1 Bulstr. 29.*

Assignment of a Mortgage for Years, and Release of Equity of Redemption by Indenture Tripartite, reciting the original Lease in Trust, and the Assignment of the Lessee and his Trustee to J. B. and J. B.'s Assignment of the same to H. S. H. S. and J. B.'s Assignment to E. G. for the Mortgage Money to H. S. and a further Sum to J. B. with a Confirmation of J. B. and discharge of the former Equity of Redemption and Sale absolute.

THis Indenture Tripartite made, &c. between Matthew Gaine of Bishop-Staford in the County of Hertford, Gent. Executor of the last Will and Testament of Elizabeth Gaine, late of L. Widow, deceased, of the first part; Jone Blundell of, &c. Widow, Relict and Administratrix of John Blundell of, &c. of the Second part; and Anthony Hoile, &c. of the Third part. Whereas by Indenture Tripartite, bearing date on or about, &c. and made or mentioned to be made between the Right Honourable P. Earl of L. of the First Part, Richard Fryth, Citizen and Bricklayer of London, of the Second Part, and the said John Blundell of the Third Part; the said P. Earl of L. at the nomination and request of the said Richard Fryth, testified by his being made a Party to the said Indenture, and his Signing and Sealing thereof, did in pursuance of Articles therein mentioned, Lease Set and to Farm let unto the said J. B. his Executors, &c. All that piece or parcel of Ground situate near a certain Field or Place called Leicester fields, fronting South, on a certain Street then called or intended to be called;

led, &c. and containing in the said Front from East to West, &c. feet of Assize or thereabout, and in depth from North to South, &c. abutting Weston, &c. and East on, &c. And also the Messuages and Tenements, and all other Edifices and Buildings then or heretofore erecting or erected, or to be erected and built upon the said piece or parcel of Ground thereby demised, or any part or parcel thereof. And also all Ways, Passages, &c. (which said piece or parcel of Ground thereby demised or intended to be thereby demised with the said House or Houses thereupon built, the same is more plainly described in the Plot thereunto annexed.) To have and to hold to the said *John Blundell*, his Executors, &c. for 41 Years, at and under the yearly Rent of a Pepper Corn only for the first Year of the said Term, and at and under the yearly Rent of 3 *l.* for the remaining Forty Years of the said Term, payable half yearly (as therein is mentioned) on which said piece or parcel of Ground the said *J. Blundell* did erect one good Brick Messuage or Tenement. / And whereas by Indenture of Assignment, bearing date the Fourth day of October, Anno Dom. 1684. and made or, &c. between *John Blundell* (in his life-time) of the one Part, and *Henry Southouse* (by the Name of *Henry Southouse*, Citizen, &c. of the other Part, reciting as herein before is recited) the said *John Blundell*, for the Consideration therein mentioned, did Grant, Bargain, Sell, Assign and Set over unto the said *Henry Southouse*, his Executors and Assigns, the said therein and herein recited Indenture of Lease, and the said piece or parcel of Ground, Messuage or Tenement thereon erected

erected and built, and all and singular the said Premises therein and thereby, or meant, mentioned or intended to be therein and thereby demised, as also all the Estate, Right, &c. of the said *J. Blundell*, or which the said *J. Blundell* then had or ought to have had into or out of, &c. To have and to hold for the rest, residue and remainder, &c. subject to a Proviso or Condition of Redemption therein contained, to be void on the said *J. Blundell*, his Executors or Assigns, payment of 154*l.* 10*s.* unto the said *H. Southouse*, his Executors, &c. on the 5th day of April then next ensuing the date of the same Indenture of Assignment (as by the said, &c.) And whereas the said Sum of 154*l.* 10*s.* was not paid at, &c. whereby the said Estate and Interest of the said *H. Southouse* in the said Premises became absolute, and whereas by Indenture Tripartite of Assignment, bearing date, &c. and made or mentioned to be made between the said *H. Southouse* (by the Name of, &c.) of the First Part, the said *J. Bl.* (by the Name of C. &c.) of the Second Part, and the said *Eliz. Gaine* (by the name of, &c.) of the Third Part, reciting as therein and herein before is recited, the said *H. Southouse*, by and with the consent of the said *J. Bl.* testified, &c. and for and in Consideration of the Sum of 150*l.* of, &c. in hand paid by the said *Eliz. Gaine* to the said *H. Southouse* before the Sealing and Delivery thereof, and for the Consideration of the further Sum of 50*l.* of, &c. therein also mentioned to be paid by the said *Eliz. Gaine* to the said *J. Bl.* before, &c. the said *H. Southouse* did bargain, sell and assign, and set over unto the said *Eliz. Gaine*, her, &c. the said recited Indenture

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ture of Lease, Indenture of Assignment, piece or parcel of Ground, &c. and all her Estate and Interest therein; and the said *J. Bl.* did thereby ratifie and confirm the same unto the said *Elix. G.* her, &c. released and discharged of and from all Equity and Benefit of Redemption thereof subject to an equity of Redemption thereof on the said *J. Bl.* his Executors, &c. on payment of the Sum of 200*l.* as of, &c. unto the said *Elix. G.* her, &c. at or upon such a day, &c. and that then the said *El. G.* her, &c. should and would upon request and at the proper Costs and Charges in the Law of the said *J. Bl.* his, &c. assign, &c. unto the said *J. Bl.* his Executors, &c. or to such other Person or Persons as he or they should nominate, as to and by the said Indenture Tripartite of Assignment amongst divers the Covenants, Conditions and Agreements therein contained may more at large appear.

And whereas the said principal Sum of 200*l.* was not paid at, &c. nor at any time since, but the whole principal Sum of 200*l.* together with the Sum of, &c. for the Interest thereof is still owing, and the said *J. B.* is dead Intestate, and the said *Elix. Gaine* is also dead, and the Estate in Law in her life time became absolute, and is since devolved and vested in the said *Matthew Gaine* her Executor; And whereas the Equity of Redemption of the said mortgaged Premises is in the said *Jane Bl.* the Administratrix of the said *John Bl.* who hath lately covenanted and agreed with the said *Anthony Hoile* for sale thereof to him for the Sum of 200*l.* Now this Indenture witnesses, That the said *Mat. Gaine*, for and in consideration of

of the Sum of 200 l. of, &c. to him in hand paid by the said *Ant. Hoile*, at and before, &c. (the Receipt whereof is hereby acknowledged by the said *Mat. Gaine*, at and with the consent and request of the said *Jane Blundell* certified by her being a party, &c.) hath bargained, sold, assigned, and by these Presents doth, &c. the said recited Indentures of Leases, Indentures of Assignment, piece or parcel of Ground, Messuages, Tenements and Premisses, &c. herein meant, mentioned or intended to be assigned: And all the Estate, Right, Title, Interest, Term of Years to come and unexpired, use, possession, reversion, rents, issues, profits, benefits, advantage, property, claim and demand, whatsoever of him the said *Mat. G.* as Executor to the said *Eliz. G.* or otherwise in his own right, of, in, to and out of the said Premisses, &c. by force, vertue or means of the said recited Indenture of Lease, Indenture of Assignment or otherwise howsoever. To have and to hold, &c. from henceforth forward, for and during all the rest, &c. in as large, ample and beneficial manner, to all intents, constructions and purposes, as the said *Eliz. G.* (in her life time) or the said *Mat. G.* her Executors may, could, or of right ought to have held and enjoyed the same, had these presents never been made. And this Indenture further witnesseth, That the said *Jane Blundell*, for the consideration aforesaid, and for the consideration of the Sum of 5 s. of like lawful, &c. hath granted, &c. and by these Presents doth grant, bargain, sell, ratifie and confirm unto the said *A. H.* his, &c. the hereby assigned or meant, mentioned or intended to be assigned

Premises, with their, and every of their Appurtenances, and all her Right, Title, Interest, Trust, Property, Claim and Demand whatsoever in Law or Equity. To have and to hold the same unto him the said, &c. his Executors and Assigns, freely acquitted, released, and discharged of and from all Benefit and Equity of Redemption in the said herein recited Indenture Tripartite mentioned and contained, and of and from all other Equity of Redemption whatsoever, paying and performing, growing Rents and Covenants in the said original Lease contained on the part of the Lessee, &c.

**The Plea and Answer of J. S. of, &c.
to the Bill of Complaint of T. S.
Gent. Complainant.**

Equity of Redemption Purchased.

THIS Defendant, by Protestation, not *In Scacc.*
confessing or acknowledging all or
any the Matters or Things in the said Bill
of Complaint contained, to be true in
such manner and form as the same are
therein set forth and charged against this
Defendant; other than such as are here-
in after confessed and set forth by this
Defendant's Answer; As to so much of
the Complainant's said Bill as pretends or
chargeth that the Complainant is intituled
in Equity to have an Account from this De-
fendant of the Rents, Issues, and Profits of
the Mannours, Messuages, Lands, Tene-
ments, and Premisses in the Bill mentioned,
taken or received by this Defendant's said
Father in his Life time, and this Defendant
since his Death: And that he the said Com-
plainant ought to be admitted to redeem
the said Mannours, Messuages, Lands, and
Freehold Premisses. He this Defendant for
Plea thereto saith, That the Complainant's
Grandfather did, as this Defendant verily
believes, Mortgage the said Mannour and
Premisses to J. S. for the Principal Sum of
800*l.* and afterwards, upon this Defen-
dant's said Father's Intermarriage with the
Daughter of the said I. S. the said I. S. did
P 4 assign

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assign the said Mortgage to this Defendant's said Father, in and for part of his Wife's Portion; and that after the Assignment of the said Mortgage (to wit) sometime in the Month of *January* in the Year of our Lord 1670, or thereabouts, the Defendant's said Father H. S. came to an Agreement with W. S. the Complainant's Grandfather, and W. S. the Younger, Father of the Complainant, for the absolute Purchase of the Reversion, Inheritance, and Equity of Redemption of the Premises mortgaged as aforesaid to this Defendant's said Father. And it was thereupon agreed by the said W. S. the Complainant's Grandfather, and W. S. his Father, and this Defendant's said Father, That the said Reversion, Inheritance, and Equity of Redemption of the said Premises expectant upon the said mortgaged Term, should by them the said W. S. the Grandfather, and W. S. the Father, be settled to and upon G. L. of, &c. and his Heirs and Assigns for ever, being a Person nominated and appointed by this Defendant's said Father to take the same in Trust for him this Defendant's said Father, his Heirs and Assigns, to prevent the drowning of the above-said mortgaged Term assigned to and vested in this Defendant's said Father as aforesaid. Pursuant to which said Agreement the said W. S. the Grandfather, and W. S. the Father of the Complainant, by their Deed indented, bearing Date the, &c. made between them the said W. S. the Grandfather, and W. S. the Father, of the one Part, and the abovesaid G. L. of the other Part; one Part whereof under the Hands and Seals of the said W. S. the Grandfather, and W. S. the Father,

Father, this Defendant hath ready to produce to this Honourable Court, did for the Consideration of *s. s.* therein mentioned to be paid to them by the said G. L. demise, grant, bargain and sell unto the said G. L. the abovesaid Mannours, Messuages, and all the Freehold Premisses mentioned in the Complainant's said Bill to be mortgaged as aforesaid, by the Name of all that Mannour of *K. alar*, &c. and all the Rights, Members, Profits, Perquisites of Court, and Appurtenances thereunto belonging, then in the Occupation of W. S. the Younger, Father of the Complainant or his Assigns: And all that Messuage, Tenement or Farm situate and being in *K.* aforesaid, called or known by the name of *N.* or by what other Name soever the same be called or known, and all the Houses, Buildings, Yards, Gardens, Orchards, Lands, Tenements, Meadows, Pastures, Feedings, Heath Ground, Woods, Underwoods, Sheep walks, Hereditaments, and Appurtenances, being Freehold, to the said Messuage or Tenement belonging, or therewith then or late before this used, occupied or enjoyed as the same then or late before then were in the several Occupations of, &c. their Assign or Assigns: And all that Messuage or Tenement situate in *K.* aforesaid, called or known by the Name of, &c. or by whatsoever Name or Names the same be called or known, with all the Houses, Buildings, Yards, Gardens, Orchards, Lands, Tenements, &c. and Appurnances to the said last mentioned Messuage or Tenement belonging, or therewith then or late before then used, occupied or enjoyed as the same then or late before then was in the Occupation

tion of I. W. &c. and all other the Freehold Lands, Tenements, Meadows, Pastures, Feedings, Woods, Underwoods, Fold-cour-
ses, Liberties of Foldage, Heath Grounds, Commons, and Hereditaments whatsoever of them the said W. S. the Elder, and W. S. the Younger, or either of them, situate, lying and being in K. aforesaid, or in any other Town there near adjoining between the Way, &c. towards the North, and the Way called the, &c. leading from, &c. towards the South, in the several Occupations as well of them the said W. S. &c. as of, &c. their or some or one of their Assignee or Assigns, To have and to hold all and singular the said Mannours, Messuages, Lands, and Premisses to him the said G. L. his Executors and Administrators from the day of the Date of the said Deed, for and during the full end and term of one whole Year from thence next ensuing, and fully to be compleat and ended. After the executing of which said Deed the Complainant's said Grandfather and Father by another Deed indented, bearing date the 26th Day of January, &c. and made between them the said W. S. the Grandfather, and W. S. the Father, by the Name of, &c. of the one Part, and the said G. L. by the Name of G. L. of, &c. of the other Part (one Part whereof under the Hands and Seals of W. S. the Grandfather, and W. S. the Father of the Complainant, this Defendant hath ready to produce to this Honourable Court) reciting, That whereas they the said W. S. the Elder, and W. S. the Younger, had by their said Deed of Bargain and Sale conveyed the Premisses unto the said G. L. for one whole Year,

Year, and that the said G. L. was by virtue of the said Deed, and of the Statute for Transferring of Uses into Possession in actual Possession thereof, they the said W. S. the Elder, and W. S. the Younger, for divers good Causes and Considerations them thereunto moving did for themselves, their Heirs and Assigns, Grant, Release, and Confirm unto the said G. L. all and singular the said demised Mannour, Messuages, Lands, Tenements and Premisses, with their Appurtenances, and all the Estate, Right, Title, Interest, Equiry of Redemption, Condition, Reversion, Remainder, Claim and Demand whatsoever of them the said W. S. the Elder, and W. S. the Younger, or either of them of, in, or to the same, To have and to hold the same to the said G. L. his Heirs and Assigns, to the only use of him the said G. L. his Heirs and Assigns for ever, which said Conveyance of Reversion and Equiry of Redemption of the Premisses to the said G. L. as aforesaid, he the said G. L. by his Deed Poll bearing Date the 27th Day of *January*, in, &c. duly executed by him under his Hand and Seal, did declare to be made by him only in Trust for the said W. S. this Defendant's said Father and his Heirs, as by the said Deed which this Defendant hath ready to be produced to this Honourable Court, doth and may appear.

And this Defendant doth further say, That the aforesaid Deed of Grant and Release made to the said G. L. of the said Mannour, Messuages, Lands and Premisses as aforesaid, doth contain an Exception of the
said

The Law of Mortgages.

said Mortgage to the said J. S. and also of an Annuity of 40 *l. per Annum*, payable Quarterly out of the Premisses to M. then Wife and now the Widow and Relict of A. S. Gent. and the Heirs of her Body, with which this Defendant doth hold the Premisses now charged, but that the said Deed doth not contain or any way purport any Condition, Proviso, Clause, Covenant or Agreement whatsoever for, or of any Power or Equity of Redemption of the Premisses, or any part thereof, or any exception of any part thereof, or of any Interest therein, other than as herein before is set forth. But this Defendant doth insist, and doth verily believe that the same was an absolute Purchase made by this Defendant's said Father, for a good and valuable Consideration, without any Promise or Agreement either in Writing or otherways howsoever made or mentioned between the Defendant's said Father, and the Complainant's said Father or Grandfather, whereby the Complainant's said Father or Grandfather was, were or might be intituled to any Right or Equity of Redemption in or to the Premisses or any part thereof, after the Conveyance of the same to the said G. L. as aforesaid, and to so much of the Complainant's said Bill of Complaint, as demands an Account of the Rents and Profits, and of the Redemption of the Copyhold and Premisses therein mentioned. For Plea thereunto, this Defendant saith, That W. S. the Complainant's Grandfather being seised of about 26 Acres of Land holden by Copy of Court Roll of the Mannour of P. lying and being in the Parish of K. in the Bill mentioned on the 26th Day of J.

in

in the Year of our Lord, &c. did surrender the same out of his Hands into the Hands of the Lord of the said Mannour by the Rod; by the Hands of T. K. Copyhold Tenant of the said Mannour, in the presence of T. S. likewise Copyhold Tenant thereof, witnessing the same according to the Custom of the said Mannour, to the absolute Use and Behoof of H. S. this Defendant's said Father, his Heirs and Assigns for ever, without any Condition, Proviso, or Power of Redemption whatsoever. And that pursuant to the said Surrender this Defendant's said Father at a Court holden for the said Mannour the 14th Day of, &c. in the Year of our Lord, &c. (the said Surrender having been duly presented at the next Court holden for the said Mannour, after the taking thereof according to the Custom of the said Mannour) was admitted to the Copyhold Premises surrendered as aforesaid, To hold to him and his Heirs at the will of the Lord, according to the Custom of the said Mannour, and according to the Form and Effect of the said Surrender. And further this Defendant for Plea as aforesaid saith, That the said W. S. the Complainants Grandfather, being likewise seised of certain other Pieces or Parcels of Copyhold Land, lying and being in K. aforesaid, &c. (The like Plea to them *ut supra.*) Which said several Conveyances of the said Mannours, Messuages, Lands and Freehold Estate, and also the Surrenders made as aforesaid of the abovesaid Copyhold Premises, being (to the best of the Defendant's Knowledge) all the Copyhold Lands and Tenements which this Defendant or his said Father ever had or claimed

ed to have from or under the Complainant's said Grandfather or Father, as also the respective Admissions of this Defendant's said Father herein before set forth, he this Defendant doth insist on, and doth verily believe were absolute, without any Agreement or Power of Redemption, and the same is ready to averr, maintain and prove, as this Honourable Court shall award, and pleads the same in Bar to such part of the Complainant's said Bill as prays an Account and a Redemption of the said Mannours, Messuages, Lands, Freehold and Copyhold Premises, and humbly prays the Judgment of this Honourable Court, whether he this Defendant is compellable to make any further or other Answer thereto. And for Answer to all the Charges, Matters and Things in the said Bill of Complaint contained, and not herein before pleaded unto, saith, That he believed the Complainant's Grandfather in the Bill named was seised in Fee of the Mannour, Messuages, Lands, and Tenements in the Bill mentioned, and herein before pleaded unto, and that having made such Mortgage as is in the said Bill mentioned unto J. S. he the said J. S. did in the Year 1663. assign over the same to H. S. this Defendant's Father for Consideration and Security of 800*l.* part of his said Father's Mortgage Portion with Ann the Daughter of the said J. S. And this Defendant further saith, That he claims the said Mannour, Messuages, Lands, Tenements, and Freehold Estate, and also the said Copyhold Lands (of which his said Father made Surrender to the use of his last Will, as this Defendant doubts not but to prove by the last Will and Testament

ment of his said Father.) And this Defendant doth deny that his said Father to his knowledge made any Promise or Agreement to pay any other or further Sum of Money for the said Copyhold Premises than he paid at and upon the Surrender of the same, and doth deny all manner of unlawful Combination, &c. without that, that any other Matter or Thing in the said Bill of Complaint contained, material or effectual in the Law for this Defendant to answer unto, and not herein and before well and sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge of this Defendant: All which Matters and Things this Defendant is ready to averr, maintain and prove, as this Honourable Court shall award, and humbly prays to be hence dismissed, with his reasonable Costs and Charges in this behalf wrongfully sustained.

W. E.

T H E

ment of his said father) And this De-
fendant does not think his said father to be
knowledgeable in any of the said matters
to pay any other or further sum of Money
for the said Copyhold Premises, than he paid
at and upon the surrender of the same, and
does deny all manner of unlawful Contri-
bution, &c. without that that any other
Matter or Thing in the said Bill of Com-
plaint contained, material or essential to the
Law for the Defendant in any manner, and
not herein and before well and sufficiently
answered and controverted or avoided, as
verged or denied, is true to the best of his
of the Defendant: All which Matters and
Things the Defendant is ready to aver,
maintain and prove, as the Honorable
Court shall award and direct him to do
before directed, with the said Copy-
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pursuance

W. E.
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THE

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